(26,817)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1918.**

## No. 731.

LOUIS W. HILL, ADMINISTRATOR OF THE ESTATE OF JAMES J. HILL, DECEASED, PLAINTIFF IN ERROR

vs.

NEWTON A. K. BUGBEE, COMPTROLLER OF THE TREASURY OF THE STATE OF NEW JERSEY, AND WILLIAM T. READ, STATE TREASURER.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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a New Jersey Court of Errors and Appeals.

*On Certiorari.*

On Appeal from Supreme Court.

LOUIS W HILL, Administrator of the Estate of JAMES J. HILL, Prosecutor-Appellant,

vs.

NEWTON A. K. BUGBEE, Comptroller, etc., et al., Defendants-Respondents.

State of Case.

Coult & Smith, Attorneys of Prosecutor-Appellant.
John W. Wescott, Attorney General, Attorney of Defendants-Respondents.

1 *Writ of Certiorari.*

Filed September 21, 1917.

NEW JERSEY, *ss:*

The State of New Jersey to Newton A. K. Bugbee, Comp-
[L. S.] troller of the Treasury of the State of New Jersey:

We being willing for certain reasons to be certified of a certain return, appraisement, assessment or fixing of a transfer or inheritance tax upon the transfer of property left by James J. Hill, who died intestate, or a tax on the property passing on his death, which appraisement, assessment or fixing of tax was made on or about the 27th day of November, 1916.

We do hereby command that you send under your hand and seal to our Justices of our Supreme Court of Judicature at Trenton, on the eleventh day of October, 1917, the said return, appraisement or fixing of said tax together with all things touching and concerning the same, as fully and entirely as they remain before you, together with this writ, that we may further cause to be done thereon what of right we shall see fit to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton, the twenty-first day of September, 1917.

WM. C. GEBHARDT,
*Clerk.*

COULT & SMITH,
*Attorneys.*

2 Endorsement: Allocatur, September 21st, 1917. Samuel Kalisch, J. S. C.

Service of the within writ is hereby acknowledged for both defendants this 21st day of Sept., 1917.

JOHN W. WESTCOTT,
*Attorney General.*

3 *Return.*

New Jersey Supreme Court.

On Certiorari. Return to Writ.

LOUIS W. HILL, Administrator of the Estate of JAMES J. HILL, Deceased, Prosecutor,

vs.

N. A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer, Defendants.

I, Newton A. K. Bugbee, pursuant to the command of the within writ and for a return thereto, do hereby annex copies of all the papers relating to the transfer or inheritance tax levied against the estate of James J. Hill, deceased, as within I am commanded.

NEWTON A. K. BUGBEE,
*Comptroller of the Treasury of the State of New Jersey.*

4 STATE OF NEW JERSEY:

Transfer Inheritance Tax, Non-Resident Decedents.

*Affidavit of Administrator.*

In the Matter of the Estate of JAMES J. HILL, Deceased, Late St. Paul, Ramsey Co., Minnesota.

STATE OF MINNESOTA,
*County of Ramsey, ss:*

Louis W. Hill, administrator of the estate of the above-named decedent being duly sworn, deposes and says:

Decedent died intestate May 29th, 1916.

Address of deponent, 344 Jackson street, Saint Paul, Minnesota.

Attorney of Estate is E. C. Lindley.

Address of Attorney is 1120 Great Northern Bldg., St. Paul, Minn.

| | |
|---|---|
| Total amount of real estate less mortgages, Schedule A | $1,885,120.00 |
| Total amount of personal estate, Schedule B | 8,262,311.30 |
| Total amount of estate wherever situate | 50,147,431.30 |
| Total amount of debts (exclusive of mortgages on real estate), including funeral, administration and other expenses, detailed in Schedule C | 757,571.20 |
| Net estate | $49,369,860.10 |

5 Property owned by decedent at date of death and subject to the jurisdiction of State of New Jersey:

| | |
|---|---|
| Real estate, less mortgages | None |
| Personal estate | 1,207,078.68 |
| Total amount of real and personal estate subject to jurisdiction of the State of New Jersey, Schedule D | 1,207,078.68 |

Deponent further says that the decedent was not possessed of any other property subject to the jurisdiction of the State of New Jersey.

The names of beneficiaries and relationship of each to decedent, etc., are as follows:

| Names. | Relationship. | Survived decedent, State Yes or No. | Age of life tenants or annuitants at death of decedent. | Interest of beneficiary in estate. |
|---|---|---|---|---|
| Mary T. Hill | Widow | Yes | ..... | One Third. |
| Mary Hill Hill | Daughter | Yes | ..... | Two-twenty-sevenths |
| James N. Hill | Son | Yes | ..... | Two-twenty-sevenths |
| Louis W. Hill | Son | Yes | ..... | Two-twenty-sevenths |
| Clara A. Hill | Daughter | Yes | ..... | Two-twenty-sevenths |
| Charlotte Hill Slade | Daughter | Yes | ..... | Two-twenty-sevenths |
| Ruth Hill Beard | Daughter | Yes | ..... | Two-twenty-sevenths |
| Rachel Hill Boeckmann | Daughter | Yes | ..... | Two-twenty-sevenths |
| Gertrude Hill Gavin | Daughter | Yes | ..... | Two-twenty-sevenths |
| Walter J. Hill | Son | Yes | ..... | Two-twenty-sevenths |

Deponent further says that all of the above-named beneficiaries survived the decedent and are still living, with the exception of none. All of said beneficiaries were of age at the time of the death of decedent.

(Signed) LOUIS W. HILL,
*Executor.*

Sworn and subscribed before me this 7th day of November, A. D. 1916.

(Signed) JOHN W. ROSE.

6 Important—Read Following Instructions.

If decedent died testate attach Certified Copy of Will and Certificate of Qualification of Executors.

If decedent died intestate attach Certificate of Appointment of Administrator.

If this affidavit is made by an administrator strike out the word "Executor" wherever found herein, and if by an executor strike out the word "Administrator" wherever found.

Administrators with will annexed will use the letters "C. T. A." and forward certified copy of will.

All papers must be certified by the public official under whose jurisdiction the estate is, whether it be surrogate, probate judge or by whatever title such official may be designated.

All documents remain on file in department of the state comptroller as his authority and voucher for action taken.

Unauthenticated statements are not acceptable. Answer each question in detail. Make each schedule in full detail.

Relationship of beneficiaries to decedent, whether or not such beneficiaries survived decedent and the interest of the beneficiary in the estate, are the important factors respecting transfer inheritance tax. The age at time of death of decedent, of beneficiaries who are life-tenants or annuitants, is information absolutely necessary.

Notaries public must affix seal or certific-te of appointment to affidavit.

When decedent died prior to April 20, 1909. In lieu of above form.

7 Established this fact by certificate of public official authorized by law to so certify.

Supply certificate of appointment of executor or administrator.

Supply affidavit of executor or administrator setting forth in detail the following data: Description of any and all property, real or personal, subject to the jurisdiction of the State of New Jersey and owned by the decedent at date of death; a recital stating whether or not the beneficiaries are still living; if any have died, give names, dates of death, and places of residence at date of death. Attach certified copy of will, if decedent died testate.

NOTE.

If a tax is due, consent permitting the transfer of shares of stock of New Jersey corporations will not be granted unless and until said tax is paid. Security is not acceptable in lieu thereof. However, consent to transfer will be granted upon payment of 5% of the full market value of the stock or property. If, after said transfer, it shall be ascertained by the Comptroller of the Treasury that said stock or property was not liable to said full 5% tax, the Comptroller of the Treasury will return to the executor, administrator, trustee or other representative the amount overpaid.

8 STATE OF NEW JERSEY:

Transfer Inheritance Tax, Non-Resident Decedents. Attached to and Part of Affidavit.

SCHEDULE A.

*Real Property Wherever Situate, With Statement of Liens and Encumbrances Upon Each Parcel at Death of Decedent.*

| | Assessed value for year of decedent's death. | Estimated market value. |
|---|---|---|
| Real Estate in City of St. Paul, Minnesota | $63,655.00 | $333,450.00 |
| North Oaks Farms, Ramsey County, Minnesota | 67,972.00 | 231,650.00 |
| Real Estate in City of Minneapolis, Minnesota | 76,345.00 | 120,600.00 |
| Lands in Kitson County, Minnesota | 284,922.00 | 510,000.00 |
| Lots in Humboldt, Kittson County, Minnesota | 1,696.00 | 4,000.00 |
| Lands in Clay County, Minnesota | 29,073.00 | 15,000.00 |
| Real Estate in New York City | 590,000.00 | 550,000.00 |
| Lands in Eddy County, North Dakota | 1,076.00 | 1,600.00 |
| Lands in Roberts County, South Dakota | 13,234.00 | 6,220.00 |

9

| | | |
|---|---|---|
| Mining Claims in Jefferson County, Montana | 1,425.00 | 100.00 |
| Mining Claims in Stevens County, Washington | 3,500.00 | 500.00 |
| Lands in Wellington County, Ontario, Canada | | 1,000.00 |
| Real Estate in Guelph, Wellington County, Ontario, Canada | | 1,000.00 |
| Lands on St. John River, Saguenay County, Quebec, Canada | | 10,000.00 |
| Real Estate in Vancouver, B. C., Canada | 45,000.00 | 100,000.00 |
| | | $1,885,120.00 |

Important.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

10 STATE OF NEW JERSEY:

Transfer Inheritance Tax, Non-Resident Decedents. Attached to and Part of Affidavit.

SCHEDULE B.

*Personal Property Wherever Situate.*

(Corporate Stocks.—State the correct corporate title, the number and kind of shares, the par and market values.

(Corporate Bonds.—State correct corporate title, nature of bond, year due, and rate of interest. State the amount of accrued interest computed to the date of death of decedent.)

(Bonds and Mortgages, Notes, Etc.—Short description of each. State the amount of accrued interest computed to the date of death of decedent.)

Cash in hand and on deposit, bonds and mortgages, promissory notes, claims, insurance, corporate bonds and stocks and all other personal property wherever situate.

| | Estimated market value. |
|---|---|
| (Schedule omitted, includes stocks, bonds, &c. valued at) | $20,379,008.75 |
| Interest accrued to May 26, 1910 | 316,038.61 |
| | $20,695,047.36 |

11 (Among the stocks scheduled are:

| | No. of shares. | Par value. | |
|---|---|---|---|
| Northern Securities Company | 24,141 | $2,414,100.00 | $1,207,050.00 |
| Northern Securities Company | Scrip | 57.37 | 28.68) |

Important.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY:

Transfer Inheritance Tax, Non-Resident Decedents. Attached to and Part of Affidavit.

SCHEDULE C.

*Details of Debts, Other Than Mortgages on Real Estate.*

(If any claims are secured by collateral, state what property has been pledged)

| | |
|---|---|
| Last Sickness and Funeral Expenses | $60,000.00 |
| Administration Expenses<br>Counsel Fees (Estimated)<br>Administrator's Commissions | 500,000.00 |

*Other Debts.*

| | |
|---|---|
| Claims approved by Administrator, numbered 1 to 187, inclusive, and filed in the Probate Court of Ramsey County, Minnesota | 97,571.20 |
| 12 | |
| Claims in process of adjustment (Estimated) | 100,000.00 |
| | $757,571.20 |

STATE OF NEW JERSEY:

Transfer Inheritance Tax, Non-Resident Decedents. Attached to and Part of Affidavit.

SCHEDULE D.

Details of Real and Personal Property subject to the jurisdiction of the State of New Jersey. Consents to transfer will be granted only on property included in this schedule.

Real property: None. Personal property: Corporate Stocks:

| | No. of shares. | Par value. | Estimated market value. |
|---|---|---|---|
| Northern Securities Company | 24,141 | $2,414,100.00 | $2,317,536.00 |
| Northern Securities Company | Scrip | 57.37 | 28.68 |
| Total | | | |

Important.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

13 *Tax on Transfer of Shares of Stock in New Jersey Corporations Standing in the Name of a Non-Resident Decedent.*

Estate of James J. Hill. Late of St. Paul, Minn.

Administrator, Louis W. Hill.
Post-office Address, Coult & Smith, Prudential Bldg., Newark, N. J.
Date of Death of Decedent, May 29, 1916.
Shares of Stock in New Jersey Corporations.

| Number of shares. Pfd. | Com. | Name of Company. | Market value. | Total. |
|---|---|---|---|---|
| | Cap. stock. | | | |
| 24141 | | Northern Securities Company..... | $96.00 | $2,317,536.00 |
| Scrip | | Northern Securities Company..... | ..... | 28.68 |
| | | | | $2,317,564.68 |
| Interests taxable: | | | | |
| Estate passes to widow and 9 children..... | | | | $53,057,191.60 |
| Stat. exemption..... | | | | 50,000.00 |
| | | | | $53,007,191.60 |
| $450,000.00, 1% ..... | | | | $4,500.00 |
| 1,000,000.00, 1½% ..... | | | | 15,000.00 |
| 1,000,000.00, 2% ..... | | | | 20,000.00 |
| 50,557,191.60, 3% ..... | | | | 1,516,715.75 |
| | | | | .043065 |
| Tax..... | | | | $67,018.43 |

Paid, Sept. 21, 1917.
KERSEY.

| | | | |
|---|---|---|---|
| Appraised Value of Estate..... | $53,814,762.00 | $2,317,564.68 | .043065 |
| Deductions..... | 757,571.20 | | |
| Net Estate..... | $53,057,191.60 | | |

Total Appraised Value of Shares in New Jersey Corporations ..... $2,317,564.68
Tax payable if decedent had lived in New Jersey and all the Property had been located in this State..... 1,556,215.75

14

Percentage of whole estate invested in New Jersey stocks ..... .043065
Tax due New Jersey..... $67,018.43

*Letters of Administration—Form 405.*

STATE OF MINNESOTA,
*County of Ramsey, ss:*

Louis W. Hill is hereby appointed administrator of the estate of James J. Hill deceased.

Witness, Hon. Edmund W. Bazille, Judge of the Probate Court in the County of Ramsey, and the Seal of the Court affixed the 3d day of July A. D. 1916.

[Seal of Probate Court.]

By the Court:

EDMUND W. BAZILLE,
*Judge of Probate, Ramsey County, Minn.*

STATE OF MINNESOTA,
*County of Ramsey, ss:*

In Probate Court.

I, Fred W. Gosewisch, Clerk of the Probate Court within and for said County of Ramsey, do hereby certify that I have compared the foregoing copy of the record of the Letters of Administration, In the Matter of the Estate of James J. Hill, Deceased, with the original records thereof now remaining in this office and have found the same to be correct transcripts therefrom and of the whole of such original records. And I further certify that said exemplification would be received in evidence in all courts of the State of Minnesota.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Saint Paul, in said County, this 5th day of July, A. D. 1916. [SEAL.]

FRED W. GOSEWISCH,
*Clerk of the Probate Court.*

STATE OF MINNESOTA,
*County of Ramsey, ss:*

In Probate Court.

I, Edmund W. Bazille, sole Judge of Probate Court within and for said County of Ramsey, do hereby certify that said Court is a Court of Record, and that Fred W. Gosewisch, whose signature is affixed to the foregoing certificate, is the Clerk of the said Probate Court; that said certificate is attested in due form of laws; that the aforesaid signature of said clerk is genuine, and that the seal thereto affixed is the seal of said Probate Court.

Witness my hand at Saint Paul, this 5th day of July, A. D. 1916.

EDMUND W. BAZILLE,
*Judge of Probate.*

16 STATE OF MINNESOTA,
*County of Ramsey, ss:*

In Probate Court.

I, Fred W. Gosewisch, Clerk of the Probate Court within and for the said County of Ramsey, do hereby certify that the Hon. Edmund W. Bazille, whose name is subscribed to the preceding certificate, is the sole Judge of the Probate Court within and for the County of Ramsey aforesaid, duly elected, sworn and qualified, and that the signature of said Judge to said certificate is genuine.

In Testimony Whereof, I have hereunto set my hand [SEAL.] and affixed the seal of said Court, this 5th day of July, A. D. 1916.

FRED W. GOSEWISCH,
*Clerk of the Probate Court.*

17 *Stipulation.*

New Jersey Supreme Court.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Deceased, Prosecutor,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants.

Stipulation.

Whereas, a writ of certiorari has been allowed to review the assessment of an inheritance or transfer tax assessed in the above estate,

It is hereby stipulated between the respective parties as follows:

1. That the prosecutor shall forthwith pay through the defendant Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, to the defendant William T. Read, State Treasurer, the amount of the tax assessed against the estate of James J. Hill and which is under review in this action.

2. That said payment shall be made and received without prejudice to the rights of the prosecutor in the event that it is determined that the tax should be set aside or reduced.

COULT & SMITH,
*Att'ys for Prosecutor.*
JOHN W. WESCOTT,
*Attorney General.*

Dated, Sept. 21, 1917.

18 *Supplemental Return.*

Filed August 29, 1917.

New Jersey Supreme Court.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Prosecutor,

vs.

NEWTON A. K. BUGBEE, Comptroller, etc., et al., Defendants.

Supplemental Return.

I, Newton A. K. Bugbee, pursuant to the command of the writ of certiorari issued in this case, do hereby return in addition to what I have heretofore returned a petition filed with me on the 29th day of August, 1917, relating to the transfer inheritance tax levied in the estate of James J. Hill.

NEWTON A. K. BUGBEE,
*Comptroller of the Treasury of the State of New Jersey.*

We hereby consent to the filing of the foregoing supplemental return.

COULT & SMITH,
*Attorneys for Prosecutor.*
JOHN W. WESCOTT,
*Attorney General.*

19 Filed August 29, 1917.

In the Matter of the Estate of JAMES J. HILL, Deceased, Late of the City of Saint Paul, County of Ramsey, State of Minnesota.

STATE OF NEW YORK,
*County of New York, ss:*

Louis W. Hill, administrator of the estate of the above-named decedent, respectfully represents and states:

That heretofore, to-wit, on November 7, 1916, he filed with the Comptroller of the Treasury of the State of New Jersey his affidavit, together with certain schedules thereunto attached, showing, among other things, the total amount of the real estate owned by the said decedent, the total amount of the personal estate owned by the said decedent, the total amount of the property owned by the said decedent at the date of his death subject to the jurisdiction of the State of New Jersey, etc.; that thereafter, to-wit, on November 27, 1916, the said Comptroller notified this petitioner that there was due the State of New Jersey a transfer tax, on account of transfer of shares

of stock in New Jersey corporations standing in the name of said decedent, to the amount of $67,018.43.

While this petitioner protests that there is no transfer tax due the State of New Jersey, on account of the transfer of shares of stock in New Jersey corporations standing in the name of the above-named decedent, from this petitioner and/or the heirs of the said James J. Hill, for the reason that this petitioner contends the law
20 under which the said Comptroller purported to assess the said tax is void and of no effect, because it contravenes paragraph 1 of Section 2 of Article Four of the Federal Constitution, the provisions of the Fourteenth Amendment of the Federal Constitution and Sections 1977 and 1978 of the Federal Statutes of the United States (1 Fed. Stat. Ann. 791-2), nevertheless this petitioner respectfully submits that, if the said law of New Jersey under which the said transfer tax is alleged to be assessed be not void, the tax so assessed by the Comptroller of the Treasury of the State of New Jersey is erroneous for the following reasons:

(1) It appears from "Schedule A" attached to this petitioner's affidavit of November 7, 1916, that the said decedent died seized of real property situated in the State of Minnesota of the aggregate value of $1,214,700.00 and that said decedent died seized of real property situated in the State of New York of the value of $550,000.00. Your petitioner is informed and believes, and on such information charges the fact to be, that, in the assessment of the said tax, the said Comptroller made no deduction or allowance for or on account of the dower interest of the widow, Mary T. Hill, in the said real estate situated in the States of Minnesota and New York; that said widow Mary T. Hill was seventy years of age on July 2, 1916; that her dower interest in the real estate situated in the State of New York was a one-third interest for life; that her dower interest in the real estate situated in the State of Minnesota was and is an absolute one-third interest in fee; that the statutory provisions of the
21 State of Minnesota governing said dower interest in said real estate in the State of Minnesota is as follows:

"The surviving spouse shall also inherit an undivided one-third of all other lands of which decedent at any time during coverture was seized or possessed, to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing, except such as have been transferred or sold by judicial partition proceeding or appropriated to the payment of decedent's debts by either execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens. But the land so inherited shall be subject in their just proportion to such debts of the decedent as are not paid out of his personal estate. The residue of such other lands, or, if there be no surviving spouse, then the whole thereof, shall descend, subject to the debts of the intestate, in the manner following:

"First—In equal shares to his surviving children, and to the lawful issue of his deceased children, by right of representation.

"Second—If there is no surviving child and no lawful issue of any deceased child, and the intestate leaves a surviving spouse, then the whole estate shall descend to such spouse."

See also Griswold v. McGee, 102 Minnesota 114.

(2) Your petitioner further states that he is informed and believes, and on such information charges the fact, that in the
22 assessment of the transfer tax as aforesaid the Comptroller of the Treasury of the State of New Jersey made no deduction or allowance for or on account of the widow Mary T. Hill's one-third interest in the personal property set forth and described in the "Schedule B" attached to your petitioner's said affidavit of November 7, 1916, which personal property is of an aggregate value of $48,262,-311.30; that the said widow's one-third interest in the said personal estate is an interest accruing to her under the statutes of the State of Minnesota by reason of her marriage relation; that she cannot be deprived thereof without her consent; that it is in the nature of a dower interest to the same extent as her interest in real estate, as fully appears from the General Statutes of Minnesota for 1913, Section 7243, as follows:

"When any person dies owning personal property, or any interest therein, the same shall be disposed of and distributed as follows:

"The widow shall be allowed the wearing apparel of her deceased husband, his household furniture not to exceed five hundred dollars in value, and other personal property not exceeding the same amount, both to be selected by her; and she shall receive such allowances when she takes the provisions made for her by her husband's will as well as when he dies intestate.

"2. In case there is no surviving widow, then the minor children, if any, shall receive the same allowances, to be selected by their guardian.

"3. The widow of children, or both, constituting the
23 family of the decedent, shall have such reasonable allowance out of his personal estate as the Probate Court deems necessary for their maintenance during the settlement of the estate, according to their circumstances, which in case of an insolvent estate shall not be longer than one year after administration is granted, nor, in any case, after the distributive share of the widow in the residue of the personal estate has been assigned to her.

* * * * * * *

"6. The residue, if any, of the personal estate shall be distributed as follows: one-third thereof to the surviving spouse, if any, free from any testamentary disposition thereof to which such survivor shall not have consented in writing; the remaining of such residue, or if there be no surviving spouse, then the whole thereof, except as otherwise disposed of by will, shall be distributed in the same proportions to the same persons and for the same purposes as prescribed for descent of real estate."

Wherefore, your petitioner respectfully prays that the Comptroller of the Treasury of the State of New Jersey vacate and set aside the

assessment of the transfer tax heretofore made by him and consent to the transfer of shares of stock in New Jersey corporations standing in the name of the above-named decedent, to-wit, the shares of stock of the Northern Securities Company described in your petitioner's said affidavit, of date November 7, 1916, without requiring the payment of any tax thereon; or, as an alternative, in the event your petitioner's first prayer be denied, your petitioner prays that
24 the said Comptroller re-assess and re-determine the transfer tax alleged due the State of New Jersey, after making due allowance for the widow's dower interest in both the real and personal estates as above set forth.

Dated August 7, 1917.

(Signed) LOUIS W. HILL.

STATE OF NEW YORK,
*County of New York, ss:*

Louis W. Hill, being first duly sworn, says that he is the person who made and signed the annexed and foregoing petition; that he has read the same and knows the contents thereof, and that he verily believes the same to be true.

(Signed) LOUIS W. HILL.

Subscribed and sworn to before me, this 9th day of August, A. D. 1917.

(Signed) CELIA SACHS,
*Notary Public, New York County, No. 6.*

My commission expires Mar. 30, 1918.

25 *Agreed State of Facts.*

New Jersey Supreme Court.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Prosecutor,

vs.

NEWTON A. K. BUDDEE, Comptroller, etc., et al., Defendants.

Agreed Statement of Facts.

The following statement of facts is agreed to by the attorneys for the prosecutor and by the Attorney General on behalf of the defendants in the above entitled action, to be used at the hearing upon the return of the writ of certiorari granted herein:

I.

That the statements in the affidavit of Louis W. Hill and the statements in the schedules attached thereto, annexed to the return of the writ in this case, shall, for the purposes of this action, be taken as true.

II.

That James J. Hill died intestate on May 29, 1916, in the State of Minnesota and was at and just prior to his death a resident of and domiciled in the State of Minnesota and was a citizen of the United States and of said State of Minnesota.

III.

That letters of administration were duly issued by the Judge of the Probate Court of the County of Ramsey in the State of
26 Minnesota to Louis W. Hill on the 3d day of July, 1916, and that said Louis W. Hill duly qualified as such administrator.

IV.

That no property of any kind, character or description was left by said decedent within the State of New Jersey other than 24,141 shares in the Northern Securities Company, a New Jersey corporation, and scrip in the said company to the value of $57.37; that said certificates of stock were not physically within the limits of the State of New Jersey at the time of the death of the said James J. Hill.

V.

That the Comptroller of the Treasury of the State of New Jersey made a demand upon the prosecutor for the payment of the taxes assessed under review in this action, before the commencement thereof.

VI.

That Mary T. Hill, the widow of James J. Hill, and Mary H. Hill, James N. Hill, Louis W. Hill, Clara A. Hill, Charlotte H. Slade, Ruth H. Beard, Rachel H. Boeckmann, Gertrude H. Gavin and Walter J. Hill, children of the said James Hill, his heirs-at-law, were at the time of the death of the said James J. Hill non-residents of the State of New Jersey and were citizens of the United States and of States of the United States other than the State of New Jersey.

VII.

That Louis W. Hill, administrator of the estate of James J. Hill, is a citizen of the State of Minnesota and resident and domiciled in said State.

VIII.

27 That the method of assessing the tax due the State of New Jersey in the estate of James J. Hill is duly set forth in the return and that the sum of $53,057,191.60 represents the entire value of the estate passing to the widow of James J. Hill and his nine children without any deduction therefrom for any dower or right of dower, or thirds, under the statute of any state.

IX.

That the Northern Securities Company is a New Jersey corporation incorporated Nov. 13, 1901, under an act entitled "An Act concerning corporations" (Revision of 1896)

X.

That the facts stated in the affidavit and petition of Louis W. Hill, dated August 7, 1917, and filed with the Comptroller August 29, 1917, are true, but this stipulation shall not apply to the statements contained in said petition as to the statute or common law of any other state, or as to the application of such statute or common law to the facts stated in said petition.

XI.

That for the purpose of determining the law of the State of New York or the law of the State of Minnesota, reference may be made to any statute book or pamphlet session laws of said states, and to the official reports of the decisions of the courts of such states, or either of them.

COULT & SMITH,
*Attorneys for Prosecutor.*
JOHN W. WESCOTT,
*Attorney General, Attorney for Defendants.*

Dated January 9, 1918.

28 *Reasons.*

Filed Oct. 19, 1917.

New Jersey Supreme Court.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Prosecutor,

vs.

NEWTON A. K. BUGBEE, Comptroller, etc., et al., Defendants.

On Certiorari. Reasons.

Louis W. Hill, administrator of the Estate of James J. Hill, deceased, by Coult & Smith, his attorneys, comes and prays that the assessment of an inheritance transfer or transfer tax upon the stock in Northern Securities Company, a New Jersey corporation, owned by said intestate, which tax was assessed on or about November 27, 1916, may be set aside, reversed and for nothing holden, or may be reassessed according to law, as the determination and nature of this action shall require, for the following reasons:

1. Because the Comptroller in the computing of said tax under review in this action included in the property transferred on the death of said James J. Hill the entire real estate owned by said James J. Hill at the time of his death, including that situate in the States of New York and Minnesota without any allowance or deduction therefrom or reduction therein in value by reason of
29 the dower interest of the widow of the said James J. Hill, which interest was a dower interest which she received by virtue of the laws of the State of New York and the State of Minnesota, respectively.

2. Because the Comptroller in the computing of said tax under review in this action included in the amount of taxable property passing on the death of the said James J. Hill the entire amount of the personal property owned and possessed by him at the time of his death, without any deduction therefrom or reduction thereof of personal property passing to the widow of the said James J. Hill by virtue of the laws of the State of Minnesota, which property passed as the widow's thirds under the statute of the State of Minnesota.

3. Because the Comptroller in the computing of said tax under review in this action included property and taxed the transfer thereof which was not transferred by will or intestate law, or by deed, grant, bargain, sale or gift, made in contemplation of death by the grantor, vendor or donor, intended to take effect in possession or enjoyment at or after such death, and the transfer of which property was not taxable under the laws of the State of New Jersey.

4. Because the Comptroller in computing the tax under review included property or the transfer of property which would not have

been subject to a tax under Chapter 228 of the Laws of 1909 as amended by Chapter 51 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 had James J. Hill been a resident of the State of New Jersey at the time of his death and all his real and personal estate had been located within the State of
30 New Jersey, namely, because the Comptroller included property passing on decedent's death to his widow by virtue of her dower and one-third interest in his real and personal estate; and further because said Comptroller did include in the computation of said tax as properties of the entire estate of said James J. Hill, pursuant to the provision in Chapter 39 of the Laws of 1915, a part of said estate, namely, the share of the real and personal estate taken by the widow under her right of dower and thirds.

5. Because the transfer tax under review in this action on the transfer of stock in Northern Securities Company, a New Jersey corporation, forming a part of the estate of the said James J. Hill, late a non-resident of New Jersey, was assessed pursuant to the third or last paragraph of Sec. 12 of an Act entitled: "An Act to tax the transfer of property, of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine, as amended by Chapter 392 of the Laws of 1915; said paragraph of said Sec. 1 being inoperative as against the transfer of the aforesaid stock because the assessment of a tax on the transfer thereof pursuant to said paragraph denies to James J. Hill and his estate, his administrator, and distributees and heirs-at-law of his real and personal property, all citizens and residents of the United States and citizens and residents of other states of the United States than the State of New Jersey, and non-residents of the State of New Jersey, privileges and immunities enjoyed
31 by citizens of the State of New Jersey, and, therefore, the imposition of said tax contravenes Article IV, Sec. 2, Par. 1 of the Federal Constitution and the prosecutor claims the protection thereof.

6. Because the transfer tax referred to in Reason 5 under review in this action is assessed pursuant to the third or last paragraph of Sec. 12 of the said acts referred to in Reason 5, and said paragraph of said Sec. 12 provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under the said Sec. 12 requires the enforcement of a law which abridges the privileges and immunities which were of James J. Hill and now of his estate and his administrator, and distributees and heirs-at-law of his real and personal estate, all residents and citizens of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution.

7. Because the transfer tax under review in this action and referred to in Reason 5 is assessed, pursuant to the third or last paragraph of Sec. 12 of the acts therein referred to, upon the transfer of said stock within the jurisdiction of the State of New Jersey, and the said assessment and imposition of said tax denies to James J. Hill,

his estate, his administrator and the distributees and heirs-at-law of his real and personal property, all residents and citizens of the United States and non-residents of the State of New Jersey, the equal protection of the laws of the State of New Jersey and particularly such acts and the assessment thereunder contravenes the
32 Fourteenth Amendment of the Federal Constitution, and the prosecutor claims the protection thereof.

8. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV., Section 2, Paragraph 1 of the Federal Constitution by denying to the prosecutor and the other persons mentioned in Reason 5 privileges and immunities enjoyed by citizens of the State of New Jersey, and the prosecutor claims the protection of said constitutional provision.

9. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden, because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the prosecutor and other persons referred to in Reason 5 and deny to them the equal protection of the laws of the State of New Jersey and particularly the acts referred to, and the prosecutor claims the protection of said constitutional provisions.

10. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to operates differently in the case of non-resident citizens of the United States where there is a transfer by intestate law or a legacy which is general or residuary than in the case of a transfer by a resident citizen of the State of New Jersey to persons of the same class, of a legacy which is specific, and therefore such acts are inoperative and void for the same reasons set out in Reasons 5, 6 and 7.

33 11. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to and under Chapter 151 of the Public Laws of 1914 and amended by Chapter 392 of the Laws of 1915 in the case of non-resident citizens of the United States operates differently than it does upon citizens of the State of New Jersey and non-resident citizens of the United States who are specific legatees and upon distributees and heirs-at-law and general and residuary legatees, and therefore said statutes are inoperative and void for the reasons set out in Reasons 5, 6 and 7.

12. Because as against the prosecutor and the other persons referred to in Reason 5 the assessment of said tax referred to in said Reason 5 under the acts therein referred to and under Chapter 151 of the Laws of 1914 and under Chapter 392 of the Laws of 1915, is made in a different manner and at a higher rate than on the transfer of stocks by intestate law or by bequests to specific legatees or general or residuary legatees of the same class referred to in Sec. 1 of the Act of 1909 therein referred to, as amended by Chapter 151 of the Laws of 1914, and amended by Chapter 392 of the Laws of 1915, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the constitutional provisions referred to in Reasons 5, 6 and 7.

13. Because the assessment of said tax referred to in the foregoing reasons and the acts therein referred to violate the provisions of Sections 1977 and 1978 of the Revised Statutes of the United States (1 Federal Statutes, Annotated, pages 791-792).

34 14. Because the assessment of the tax referred to in the foregoing reasons is made under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art. IV, Sec. 7, Paragraph 3.
Art. IV, Sec. 7, Paragraph 4.
Art. IV, Sec. 7, Paragraph 12.

15. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

16. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter

35 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more than one object in contravention thereof.

17. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 12 of the Constitution of the State of New Jersey in that said law provides that an existing law or part thereof shall be made or deemed a part of the act and provides that an existing law and part thereof shall be applicable and does not insert such provision in said act.

18. Because there is no succession by virtue of the laws of the State of New Jersey on the transfer of the stock in New Jersey corporations held by a non-resident at the time of his death which is taxable pursuant to the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, and to so hold would violate the constitutional provisions hereinbefore referred to.

19. Because the stock hereinbefore referred to on the right of succession thereto, owned, held and descending as aforesaid, is not em-

braced within the property or transfers made taxable in the acts referred to in the foregoing reasons.

20. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, if construed to impose a tax such as has
36 been levied, is unconstitutional, as it is a property tax and violates Article IV, Section 9 of the New Jersey Constitution which provides that property shall be assessed for taxes under general laws by uniform rules according to its true value.

21. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional in that it violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

22. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional and void in that it attempts to subject to taxation property, rights and the succession thereto and transfer thereof which cannot be subject to taxation by the State of New Jersey.

23. Because the said tax and the assessment thereunder is in divers other respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

24. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article 1, Sec. 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

37 25. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV of the Amendments to the Federal Constitution because it will permit the State of New Jersey through its agencies to authorize an unreasonable search in violation of such constitutional provision.

26. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided and did not grant the prayer of the prosecutor for a revision and re-computation thereof.

27. Because the Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller assessed the tax as if the accelerated rates of taxation set forth by Sec. 1, Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, referred to the entire amount of the distributive share passing on the death of James J. Hill instead of the amount subject to the previous rate of taxation.

28. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case

made and provided, in that the said Comptroller in assessing said tax did not apply the accelerated rates to the New Jersey property passing to the distributees.

29. Because the said Comptroller did not correctly compute
38 the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller did not allow an exemption of five thousand dollars, as provided by Sec. 1 of Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1915, page 267, on the legacy of the New Jersey assets passing to the beneficiary.

COULT & SMITH,
*Attorneys for Prosecutor.*

39 *Rule Substituting Defendant.*

New Jersey Supreme Court.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Deceased, Prosecutor,

VS.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer, Defendants.

On Certiorari. Rule Substituting Defendant.

It appearing that the defendant Edward I. Edwards has been succeeded by Newton A. K. Bugbee as Comptroller of the Treasury of the State of New Jersey,

It is Ordered that Newton A. K. Bugbee be substituted as defendant in the place and stead of Edward I. Edwards.

Entered.

On motion of

JOHN W. WESCOTT,
*Attorney General.*

We hereby consent to the entry of the above rule.

COULT & SMITH,
*Attorneys for Prosecutor.*

40 *Opinion.*

Filed April 25, 1918.

New Jersey Supreme Court.

LOUIS HILL, Adm'r of James Hill, Dec'd, Prosecutor,

vs.

NEWTON A. K. BUGBEE, Comptroller, et al., Defendants.

On Certiorari to Review Inheritance Transfer Tax.

In estimating the tax to be paid for the transfer of property of a non-resident intestate decedent, the Comptroller included the value of the widow's interest in lands located in the State of Minnesota where dower has been abolished and the widow takes by inheritance, under the statute, an undivided one-third of the land of her deceased husband; Held, that the widow did not take as doweress, but by inheritance under an intestate law; that it was subject to a transfer tax under the law of Minnesota, and properly included by the Comptroller as property inherited under an intestate law in estimating the total estate passing by inheritance from a decedent intestate.

Argued February term, 1918, before Justices Bergen and Black.

Coult & Smith, for Prosecutor.

Herbert Boggs, assistant attorney general for defendant.

41 The opinion of the court was delivered by

BERGEN, *J.*:

James J. Hill died intestate while a resident of the State of Minnesota, leaving real estate in that state and also in the State of New York, as well as personal property in New Jersey, the latter being subject to a transfer tax under the statute of New Jersey, and the Comptroller of New Jersey, in determining the amount of the transfer tax, included the value of the lands in Minnesota and New York without allowance for the value of the interest of the intestate decedent's widow in such real estate. The amount of the tax as ascertained and levied is not disputed if the basis is correct. A writ of certiorari was allowed to review the Comptroller's conclusion, and the only question presented is the legality of the inclusion of the value of the widow's dower, or interest in the lands in the amount upon which the transfer tax is based. Counsel for the defendant admits that the value of the interest of the widow in the New York land was improperly included because, under the law of that state, she takes a doweress and not by inheritance under any intestate law, and to that extent it is conceded that the assessment is erroneous. A different condition exists as to the land in Minnesota, for there dower has been abolished and by statute "The surviving spouse shall inherit an undivided one-third part of all other lands of which

decedent at any time during coverture was seized or possessed to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing," subject to a just proportion of decedent's debts not paid out of the personal estate.

Under this statute it cannot be doubted that as to lands in Minnesota the widow takes the undivided one-third of the lands
42 of her deceased husband by inheritance and not as doweress, and that this interest is taken by inheritance and subject to a transfer tax as a transfer by an intestate law of the state has been decided for the Supreme Court of Minnesota, Pettit v. Probate Court, 163 N. W. Rep. 285.

The prosecutor suggests that this court ought to take the view that the value of the widow's interest in the lands in Minnesota should be determined by the law of this state, where she does not take by inheritance, but as doweress, and therefore the interest of the widow is that of dower and not one acquired by any intestate law. But no authority is cited or reason presented for this novel proposition, and it ignores the fact that the character of her estate is determined by the law of the state where the land is located and not by the laws of this state. The transfer tax is levied upon the estate transferred either by will or intestate law, and the law of this state cannot create an interest in real estate, located out of its jurisdiction, different from that fixed by the law of its locus. The title of the widow to the land in Minnesota devolved on her by inheritance, under the intestate laws of that state, and its value properly included by the Comptroller, in the sum upon which the transfer tax was estimated.

The other points argued by the prosecutor have all been decided against his contention in Maxwell v. Edwards, 101 Atl. 248.

As this assessment improperly includes the value of the dower of the widow in the New York State lands, it will be set aside in order that it may be modified to conform to the views above expressed. No costs will be allowed as each party has succeeded in part.

43 *Rule Affirming Judgment.*

Entered April 29, 1918.

New Jersey Supreme Court.

LOUIS HILL, Administrator of the Estate of JAMES J. HILL, Deceased, Prosecutor,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, Defendants.

On Certiorari. Rule for Judgment.

A writ of certiorari having heretofore been allowed in the above entitled cause, and the court having inspected the record returned

with the certiorari in this cause, the reasons filed by the prosecutor, and having heard the argument of counsel, and having duly considered the same,

It is, on this twenty-sixth day of April, nineteen hundred and eighteen, ordered that the assessment, appraisement and levy of said tax, in so far as it relates to the interest of the widow of John J. Hill, deceased, in the lands situate in Minnesota, be affirmed, and in so far as it relates to the interest of the widow in lands situate in the State of New York, be reversed and set aside and modified by the Comptroller in accordance therewith, without costs to
44 either party, and in all other respects said tax is affirmed.

Entered April 29, 1918,

On moton of

JOHN W. WESCOTT,
*Attorney General, Attorney of Defendant.*

A true copy.
ENOCH L. JOHNSON,
*Clerk.*

45 *Notice and Grounds of Appeal.*

Filed.

New Jersey Supreme Court.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Deceased, Prosecutor,

vs.

NEWTON A. K. BUGBEE, Comptroller, etc., et al., Defendants.

On Appeal to the New Jersey Court of Errors and Appeals. Notice and Grounds of Appeal.

To John W. Wescott, Attorney General of the State of New Jersey, attorney for defendants:

Take notice that the prosecutor appeals from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals on the following grounds and for the following reasons:

1. Because the Comptroller in the computing of said tax under review on this appeal included in the property transferred on the death of said James J. Hill the real estate owned by said James J. Hill at the time of his death and included the real estate situated in the State of Minnesota, without any allowance or deduction therefrom or reduction therein in value by reason of the dower interest of the widow of the said James J. Hill, which interest was a dower interest which she received by virtue of the laws of the State of Minnesota.

46 2. Because the Comptroller in the computing of said tax under review on this appeal included in the amount of taxable property passing on the death of the said James J. Hill the entire amount of the personal property owned and possessed by him at the time of his death without any deduction therefrom or reduction thereof of personal property passing to the widow of the said James J. Hill by virtue of the laws of the State of Minnesota, which property passed as the widow's thirds under the statute of the State of Minnesota.

3. Because the Comptroller in the computing of said tax under review on this appeal included property and taxed the transfer thereof which was not transferred by will or intestate law or by deed, grant, bargain, sale or gift made in contemplation of death by the grantor, vendor or donor, intended to take effect in possession or enjoyment at or after such death, and the transfer of which property was not taxable under the laws of the State of New Jersey.

4. Because the Comptroller in computing the tax under review included property, or the transfer of property, which would not have been subject to a tax under Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914, and as amended by Chapter 392 of the Laws of 1915, had James J. Hill been a resident of the State of New Jersey at the time of his death and all his real and personal estate been located within the State of New Jersey, namely, because the Comptroller included property passing on decedent's death to his widow by virtue of her dower and one-third interest in his real and personal estate; and further because said Comptroller did include in the computation of said tax as
47 properties of the entire estate of James J. Hill, pursuant to the provision in Chapter 39 of the Laws of 1915, a part of said estate, viz., the share of the real and personal estate taken by the widow under her right of dower and thirds.

5. Because the transfer tax under review in this action on the transfer of stock in Northern Securities Company, a New Jersey corporation, forming a part of the estate of the said James J. Hill, late a non-resident of New Jersey, was assessed pursuant to the third or last paragraph of Sec. 12 of an act entitled "An Act to tax the transfer of property, of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine." as amended by Chapter 392 of the Laws of 1915; said paragraph of said Sec. 1 being inoperative as against the transfer of the aforesaid stock because the assessment of a tax on the transfer thereof pursuant to said paragraph denies to James J. Hill and his estate, his administrator, and distributees and heirs-at-law of his real and personal property, all citizens and residents of the United States and citizens and residents of other states of the United States than the State of New Jersey, and non-residents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey, and, therefore, the imposition of said tax contravenes Article IV., Sec. 2, Par. 1 of the Federal Constitution and the prosecutor claims the protection thereof.

6. Because the transfer tax referred to in Reason 5 under review in this action is assessed pursuant to the third or last paragraph of Sec. 12 of the said acts referred to in Reason 5, and said paragraph of said Sec. 12 provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under the said Sec. 12 requires the enforcement of a law which abridges the privileges and immunities which were of James J. Hill and now of his estate and his administrator and distributees and heir-at-law of his real and personal estate, all residents and citizens of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution.

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7. Because the transfer tax under review in this action and referred to in Reason 5 is assessed, pursuant to the third or last paragraph of Sec. 12 of the acts therein referred to, upon the transfer of said stock within the jurisdiction of the State of New Jersey, and the said assessment and imposition of said tax denies to James J. Hill, his estate, his administrator and the distributees and heirs-at-law of his real and personal property, all residents and citizens of the United States and non-residents of the State of New Jersey, the equal protection of the laws of the State of New Jersey and particularly such acts and the assessment thereunder contravenes the Fourteenth Amendment of the Federal Constitution, and the prosecutor claims the protection thereof.

8. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV, Section 2, Paragraph 1 of the Federal Constitution by denying to the prosecutor and the other persons mentioned in Reason 5 privileges and immunities enjoyed by citizens of the State of New Jersey, and the prosecutor claims the protection of said constitutional provision.

49

9. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden, because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the prosecutor and other persons referred to in Reason 5 and deny to them the equal protection of the laws of the State of New Jersey and particularly the acts referred to, and the prosecutor claims the protection of said constitutional provisions.

10. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to operates differently in the case of non-resident citizens of the United States where there is a transfer by intestate law or a legacy which is general or residuary than in the case of a transfer by a resident citizen of the State of New Jersey to persons of the same class, of a legacy which is specific, and therefore such acts are inoperative and void for the same reasons set out in Reasons 5, 6 and 7.

11. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to and under Chapter 151 of the Public Laws of 1914 and amended by Chapter 392 of the Laws of

1915 in the case of non-resident citizens of the United States operates differently than it does upon citizens of the State of New Jersey and non-resident citizens of the United States who are specific legatees and upon distributees and heirs-at-law and general and residuary legatees, and therefore said statutes are inoperative and void for the reasons set out in Reasons 5, 6 and 7.

12. Because as against the prosecutor and the other persons referred to in Reason 5 the assessment of said tax referred to in said Reason 5 under the acts therein referred to and under Chapter 151 of the Laws of 1914 and under Chapter 392 of thee Laws of 1915, is made in a different manner and at a higher rate than on the transfer of stocks by intestate law or by bequests to specific legatees or general or residuary legatees of the same class referred to in Sec. 1 of the Act of 1909 therein referred to, as amended by Chapter 151 of the Laws of 1914, and amended by Chapter 392 of the Laws of 1915, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the constitutional provisions referred to in Reasons 5, 6 and 7.

13. Because the assessment of said tax referred to in the foregoing reasons and the acts therein referred to violate the provisions of Section 1977 and 1978 of the Revised Statutes of the United States (1 Federal Statutes, Annotated, pages 791-792).

14. Because the assessment of the tax referred to in the foregoing reason is made under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art. IV., Sec. 7, Paragraph 3.
Art. IV., Sec. 7, Paragraph 4.
Art. IV., Sec. 7, Paragraph 12.

15. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV., Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

16. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV., Section 7, Paragraph 4 of the Constitution of the State of New

Jersey in that said law embraces more than one object in contravention thereof.

17. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV., Section 7, Paragraph 12 of the Constitution of the State of New Jersey in that said law provides that an existing law or part
52 thereof shall be made or deemed a part of the act and provides that an existing law and part thereof shall be applicable and does not insert such provision in said act.

18. Because there is no succession by virtue of the laws of the State of New Jersey on the transfer of the stock in New Jersey corporations held by a non-resident at the time of his death which is taxable pursuant to the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, and to so hold would violate the constitutional provisions hereinbefore referred to.

19. Because the stock hereinbefore referred to on the right of succession thereto, owned, held and descending as aforesaid, is not embraced within the property or transfers made taxable in the acts referred to in the foregoing reasons.

20. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, if construed to impose a tax such as has been levied, is unconstitutional, as it is a property tax and violates Article IV., Section 9 of the New Jersey Constitution which provides that property shall be assessed for taxes under general laws by uniform rules according to its true value.

21. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional in that it violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

53 22. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional and void in that it attempts to subject to taxation property, rights and the succession thereto and transfer thereof which cannot be subject to taxation by the State of New Jersey.

23. Because the said tax and the assessment thereunder is in divers other respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

24. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article I., Sec. 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

25. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV. of the Amendments to the Federal Constitution because it will permit the State of New Jersey through its agencies to authorize an unreasonable search in violation of such constitutional provision.

26. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided and did not grant the prayer of the prosecutor for a revision and recomputation thereof.

54 27. Because the Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller assessed the tax as if the accelerated rates of taxation set forth by Sec. 1, Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, referred to the entire amount of the distributive share passing on the death of James J. Hill instead of the amount subject to the previous rate of taxation.

28. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that the said Comptroller in assessing said tax did not apply the accelerated rates to the New Jersey property passing to the distributees.

29. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller did not allow an exemption of five thousand dollars, as provided by Sec. 1 of Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, page 267, on the legacy of the New Jersey assets passing to the beneficiary.

COULT & SMITH,
*Attorneys for Prosecutor.*

Due and legal service of the within notice and grounds of appeal is hereby acknowledged this 23rd day of May, 1918.

JOHN W. WESCOTT,
*Attorney General,*
*Attorney for Defendants-Respondents.*

55 Form C248. Doc. No. —.

STATE OF NEW JERSEY:

Court of Errors and Appeals, June Term, 1918.

No. 83 of June Term, 1918.

LOUIS W. HILL, Adm'r, &c.,

*and*

NEWTON A. K. BUGBEE, Comptroller, etc., et al.

Appeal from Supreme Court.

Date, October 11, 1918.
Chancellor presiding.
Opinion by Court below.

| Check list. | Affirm. | Reverse. | Modify. |
|---|---|---|---|
| The Chancellor | 1 | | |
| " Chief Justice | 1 | | |
| Mr. Justice Swayze | 1 | | |
| " " Trenchard | 1 | | |
| " " Parker | | | |
| " " Minturn | 1 | | |
| " " Kalisch | 1 | | |
| Judge Heppenheimer | 1 | | |
| " Williams | 1 | | |
| " Taylor | 1 | | |
| " Gardner | 1 | | |
| Totals | 10 | | |

Filed Oct. 11, 1918. Thomas F. Martin, Clerk.

56 New Jersey Court of Errors and Appeals, June Term, 1918.

No. 93.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Prosecutor-Appellant,

vs.

NEWTON A. K. BUGBEE, Comptroller, etc., et al., Defendants-Respondents.

Appeal from Supreme Court.

*Per Curiam:*

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Bergen in the Supreme Court.

Endorsed: "Filed Oct. 11, 1918. Thomas F. Martin, Clerk."

57 [Endorsed:] New Jersey Court of Errors and Appeals. Louis W. Hill, administrator of the estate of James J. Hill, Prosecutor-Appellant, vs. Newton A. K. Bugbee, Comptroller, etc., et al., Defendants-Respondents. Opinion.

58 Form C-211.

New Jersey Court of Errors and Appeals, June Term, 1918.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Deceased,

vs.

NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, and WILLIAM T. READ, State Treasurer, Respondents.

On Appeal from Supreme Court.

*Order on Affirmance of Judgment.*

This cause having been duly argued at the June Term, 1918, of this court by William A. Smith, Esquire, of counsel for the appellant, and Herbert Boggs, Asst. Attorney-General, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court—

It is thereupon, on this 11th day of October, in the year of our Lord one thousand nine hundred and eighteen, ordered and adjudged that the judgment of the Supreme Court, removed by the

appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

JOHN W. WESCOTT,
*Attorney for Respondent.*

59 [Endorsed:] New Jersey Court of Errors and Appeals, June Term, 1918. Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, Appellant, vs. Newton A. K. Bugbee, Comptroller of the State of New Jersey, and William T. Read, State Treasurer, Respondents. On Appeal from Supreme Court. Order Affirming Judgment. John W. Wescott, Att'y. Filed Oct. 25, 1918. Thomas F. Martin, Clerk.

60 New Jersey Court of Errors and Appeals.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Deceased, Prosecutor-Appellant,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants-Respondents.

On Certiorari.

*Petition for Writ of Error to the United States Supreme Court.*

To the Honorable Edwin Robert Walker, Chancellor and Presiding Judge of the Court of Errors and Appeals of the State of New Jersey:

The petition of Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, prosecutor-appellant in the above entitled action, respectfully represents:

1. That your petitioner, Louis W. Hill, is a citizen of the United States and of the State of Minnesota; that your petitioner has duly qualified as administrator of the estate of James J. Hill, deceased, who was at the time of his death a citizen of the United States and of the State of Minnesota.

2. That at the present October term of this court final judgment was rendered in the above stated action, wherein your petitioner, Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, was prosecutor-appellant, and the defendants, Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey,

and William T. Read, State Treasurer, were defendants-respondents,
in the New Jersey Court of Errors and Appeals, which court
61 is the court of last resort in all causes in this State and the
highest court of law and equity in the State of New Jersey in which a decision could be had.

3. That said action was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Comptroller of the State of New Jersey and the Treasurer of the State of New Jersey to review the legality of a certain assessment of tax made on or about the twenty-seventh day of November, nineteen hundred and sixteen, assessing a transfer inheritance tax against the said petitioner on the transfer of property of the late James J. Hill coming into the hands of your petitioner.

4. That upon the hearing in said action the Supreme Court of New Jersey affirmed said assessment of said tax, whereupon your petitioner appealed from said judgment to the Court of Errors and Appeals; and the matter coming on to be heard before this court, the judgment of the Supreme Court was in all things affirmed.

5. That said action by the said Comptroller of the State of New Jersey assessing a tax as aforesaid was in violation of the Constitution of the United States in that the method of objection objected to denies to James J. Hill, the decedent, his administrator, next of kin and heirs-at-law, all non-resident citizens, an immunity enjoued by resident citizens and their next of kin and heirs-at-law, viz, the taxing of the transfer of stock or other property which is subject to the jurisdiction of the State of New Jersey at a rate not greater than set forth in Section 1 of the Taxing Act, which is the rate that
applies to resident decedents; and in that the assessment of
62 said tax is a viola- Paragraph 1, Section 2 of Article IV
of the Federal Constitution and the Civil Rights Acts passed thereunder, as infringing upon the privileges and immunities of non-resident citizens, and also in violation of the Fourteenth Amendment in that the method of assessing the tax applied violates the essential quality of taxation which requires that taxes be imposed upon a rule of uniformity, and in that in assessing the tax the assessment was based upon property over which the State of New Jersey had no jurisdiction.

6. That your petitioner urged in said Supreme Court and in said Court of Errors and Appeals that all of said matters and things were secured to your petitioner under and by virtue of Paragraph 1, Section 2 of Article IV of the Federal Constitution, and under and by virtue of the Fourteenth Amendment to the Federal Constitution, and under and by virtue of Sections 1977 and 1978 of the Revised Statutes of the United States, and under and by virtue of Article 1, Section 10, Paragraph 1 of the Federal Constitution, and the assessment and imposition of said tax was in violation of Article IV of the amendments to the Federal Constitution; and your petitioner urged that the judgment of the Supreme Court and the judgment of the Court of Errors and Appeals were in violation of the Constitu-

tion of the United States and the Federal Statutes, and particularly of the aforesaid provision thereof.

7. That the judgment of the Supreme Court was based upon an opinion rendered in that court wherein the court dealt with some of the federal questions raised, the court stating in its opinion as follows:

"The other points argued by the prosecitor have all been decided against his contention in Maxwell v. Edwards, 101 Atl., 248.

63 8. That the New Jersey Court of Errors and Appeals being the highest court in the State of New Jersey in which said judgment could be rendered sustaining the tax hereinbefore referred to, and said court having affirmed the judgment of the Supreme Court, basing its determination on the judgment of the Supreme Court and holding that the assessment of the tax herein was valid and effectual in law, and having decided that your petitioner is not entitled to the rights claimed in and by virtue of the Constitution of the United States and the Federal Statutes hereinbefore referred to, your petitioner alleges that he is aggrieved in that in the proceedings aforesaid the said courts have denied to him the rights to which he is entitled as a citizen of the United States and of a State other than the State of New Jersey, all of which will more fully and particularly appear in detail in the record presented herein.

Your petitioner therefore prays that a writ of error may issue from the Supreme Court of the United States directed to the New Jersey Court of Errors and Appeals, removing the judgment and proceedings aforesaid, that there may be done thereof what according to the Constitution of the United States and the laws of the land ought to be done, and that your petitioner may have such other relief as may be proper.

And your petitioner will ever pray, etc.

COULT & SMITH,
*Attorney for and of Counsel with Petitioner.*

64 STATE OF NEW JERSEY,
*County of Essex, ss:*

Joseph Coult, of full age, being duly sworn, deposes and says:

That he is the attorney for and of counsel with the petitioner in the foregoing petition named, and that the facts stated in said petition are true.

JOSEPH COULT.

Subscribed and sworn to before me this 24th day of October, 1918.

[Seal Florence I. Ennis, Notary Public, Newark.]

FLORENCE I. ENNIS,
*Notary Public of New Jersey.*

65 [Endorsed:] New Jersey Court of Errors and Appeals. 4461. Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, Prosecutor-Appellant, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendant-Respondents. On Certiorari. Petition for Writ of Error to the United States Supreme Court. Coult & Smith, Attorneys for Prosecutor-Appellant, 763 Broad St., Newark, N. J. Filed Oct. 31, 1918, Thomas F. Martin, Clerk. Read on application for writ of error Oct. 31st, 1918. Writ of error allowed. E. R. Walker, Chancellor and President Judge of the New Jersey Court of Errors and Appeals in the last resort in all causes.

66 Know All Men By These Presents, that we, Louis W. Hill, Administrator of the Estate of James J. Hill, deceased; as Principal, and National Surety Company, a corporation organized and existing under the laws of the State of New York and authorized to do business in the State of New Jersey, as Surety, obligors, are held and firmly bound unto Newton A. K. Bugbee, Comptroller of the State of New Jersey, and William T. Read, Treasurer of the State of New Jersey, Obligees, in the full and just sum of Five Hundred Dollars ($500), lawful money of the United States of America, to be paid to the said Obligors or to their certain attorney, successor, successors or assigns, to which payment, well and truly to be made, the said obligors bind themselves and their successors, jointly and severally, firmly by these presents.

Sealed with their respective seals and dated this 21st day of October, in the year of our Lord one thousand nine hundred and eighteen.

Whereas, lately, in the New Jersey Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, in a suit pending in said court between Louis W. Hill, Administrator of the Estate of James J. Hill, Prosecutor-Appellant, and Newton A. K. Bugbee, Comptroller of the State of New Jersey, and William T. Read, Treasurer of the State of New Jersey, Defendants-Respondents, final judgment was rendered against the said Louis W. Hill Administrator of the Estate of James J. Hill, deceased, and in favor of said Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, Treasurer of the State of New Jersey, and the said Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, being about to apply for a writ of error to reverse the judgment in said suit and for the
67 issuing of a citation directed to the said Newton A. K. Bugbee, Comptroller of the State of New Jersey, and William T. Read, Treasurer of the State of New Jersey, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington in the District of Columbia.

Now, Therefore, the condition of the above obligation is such, that if the said Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, shall prosecute his writ of error to effect and

answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

LOUIS W. HILL,
*Administrator of the Estate of James J. Hill, Deceased.*
NATIONAL SURETY COMPANY,
By D. I. YORK,
*Its Attorney-in-Fact.*
(Corporate Seal.)

Signed, Sealed and Delivered in the Presence of
E. N. LINDLEY,
JOHN J. BAYLES,
*As to Principal.*
V. W. GREEN,
M. FREDERICK, *Sec'y,*
*As to Surety.*

STATE OF MINNESOTA,
*County of Ramsey, ss:*

On this 21st day of October, A. D. 1918, before me appeared D. I. York, to me personally known, who being by me duly sworn, did say that he is the attorney-in-fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said D. I. York, acknowledged said instrument to be the free act and deed of said corporation.

68 V. W. GREEN,
*Notary Public, Ramsey County, Minnesota.*
[SEAL.]

My Commission Expires Sept. 22, 1925.

Approved as to form, amount and sufficiency of surety,
E. R. WALKER,
*Chancellor and President Judge of the Court of Errors and Appeals in the Last Resort in all Causes in the State of New Jersey.*

69 [Endorsed:] Appeal Bond. Louis W. Hill, Administrator of the Estate of James J. Hill, Deceased, to Newton A. K. Bugbee, Comptroller of the State of New Jersey, and William T. Read, Treasurer of the State of New Jersey. Dated Oct. 21, 1918. Filed Oct. 31, 1918. Thomas F. Martin, Clerk.

70 State of New Jersey.

[Coat-of-Arms.]

Department of State.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the original Bond, in the case of Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, Prosecutor-Appellant vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants-Respondents, was lodged in this office on the Thirty-first day of October, Nineteen hundred and eighteen.

In testimony whereof, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this First day of November, A. D., 1918.

[Seal of the Secretary of the State of New Jersey.]

THOS. F. MARTIN,
*Clerk.*

71 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Presiding Judge and Justices and Judges of the Court of Errors and Appeals of the State of New Jersey, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said action between Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, prosecutor-appellant, and Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, defendant-respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or ex-
72 emption especially set up or claimed under such clause of the said constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Louis W.

Hill, Administrator of the Estate of James J. Hill, deceased, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 31st day of October in the year of our Lord one thousand nine hundred and eighteen.

[Seal *U. S.* District Court of United States, District of New Jersey.]

GEORGE T. CRANMER,
*Clerk.*
By ROBERT S. CHEUVIER,
*Deputy.*

JOSEPH COULT,
*Attorney for Plaintiff in Error.*

73 [Endorsed:] 4461. Supreme Court of the United States. Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, Plaintiff in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants in Error. Writ of Error to New Jersey Court of Errors and Appeals. Filed Oct. 31, 1918. Thos. F. Martin, clerk. Joseph Coult, Attorney for Plaintiff in Error, 763 Broad Street, Newark, N. J. Allowed. E. R. Walker, Chancellor and President Judge of the N. J. Court of Errors and Appeals in the last resort in all causes. Service of the within Writ of Error acknowledged for both defendants this 31st day of October, 1918. John W. Wescott, Attorney General, Attorney for Defendants.

74 Form C—535.

STATE OF NEW JERSEY:

[Court-of-Arms.]

Department of State.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the original Writ of Error in the case of Louis W. Hill, Administrator of the Estate of

James J. Hill, deceased, Prosecutor-Appellant, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants-Respondents, was lodged in this office on the Thirty-first day of October, Nineteen hundred and eighteen, together with a copy thereof for the said Respondents.

In testimony whereof, I have hereunto set my hand and affixed the Official Seal of said Court, at Trenton, this First day of November, A. D. 1918.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
*Clerk.*

75 Supreme Court of the United States.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Deceased, Plaintiff in Error,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants in Error.

On Writ of Error.

*Assignments of Error.*

To the Honorable the Justices of the Supreme Court of the United States:

And now comes Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, plaintiff in error, and makes and files these assignments of error:

That there is manifest error in the record and proceedings herein:

1. Because by the judgment of the Court of Errors and Appeals of the State of New Jersey in affirming the judgment of the Supreme Court of the State of New Jersey, which affirmed a certain transfer or inheritance tax assessed and made against said plaintiff in error on the estate of the said James J. Hill on or about the 27th day of November, 1916, and brought to the New Jersey Supreme Court by writ of certiorari issued out of that court in this cause, said court erred and should have reversed the judgment of the New Jersey Supreme Court and set aside said tax.

2. Because said Court of Errors and Appeals of the State of New Jersey erred in not reversing said judgment of the said Supreme Court of the State of New Jersey in this action for the several causes and reasons, or for one or more of the causes and reasons
76 and assignments of error filed by the plaintiff in error and in not sustaining the allegations of error so filed.

3. Because the tax under review in this action on the transfer of stock in Northern Securities Company, a New Jersey corporation, forming a part of the estate of James J. Hill, late a non-resident of New Jersey, was assessed pursuant to the third or last paragraph of Sec. 12 of an Act entitled "An Act to tax the transfer of property, of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine," as amended by Chapter 392 of the Laws of 1915; said paragraph of said Sec. 1 being inoperative as against the transfer of the aforesaid stock because the assessment of a tax on the transfer thereof pursuant to said paragraph denies to James J. Hill and his estate, his administrator, and next of kin and heirs-at-law of his real and personal property, all citizens and residents of the United States and citizens and residents of other states of the United States than the State of New Jersey, and non-residents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey, and, therefore, the imposition of said tax contravenes Article IV, Sec. 2, Par. 1 of the Federal Constitution and the plaintiff in error claims the protection thereof.

4. Because the transfer tax referred to in the third assignment of error in this action, is assessed pursuant to the third or last paragraph of Sec. 12 of the said acts referred to therein, and said paragraph of said Sec. 12 provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under the said Sec. 12 requires the en-
77 forcement of a law which abridges the privileges and immunities which were of James J. Hill and now of his estate and his administrator and next of kin and heirs-at-law of his real and personal estate, all residents and citizens of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution.

5. Because the transfer tax under review in this action and referred to in the third assignment of error is assessed, pursuant to the third or last paragraph of Sec. 12 of the acts therein referred to, upon the transfer of said stock within the jurisdiction of the State of New Jersey, and the said assessment and imposition of said tax denies to James J. Hill, his estate, his administrator and next of kin and heirs-at-law of his real and personal property, all residents and citizens of the United States and non-residents of the State of New Jersey, the equal protection of the laws of the State of New Jersey and particularly such acts and the assessment thereunder contravenes the Fourteenth Amendment of the Federal Constitution, and the plaintiff in Error claims the protection thereof.

6. Because the entire acts referred to in the third assignment of error are unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV, Section 2, Paragraph 1 of the Federal Constitution by denying to the plaintiff in error and the other persons mentioned in the third assignment of error privileges and immunities enjoyed

by citizens of the State of New Jersey, and the plaintiff in error claims the protection of said constitutional provision.

7. Because the entire acts referred to in the third assign-
78 ment of error are unconstitutional and void and the tax thereunder should be set aside and for nothing holden, because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the plaintiff in error and other persons referred to in said third assignment of error and deny to them the equal protection of the laws of the State of New Jersey and particularly the acts referred to, and the plaintiff in error claims the protection of said constitutional provisions.

8. Because the assessment of said tax, referred to in the third assignment of error, under the acts therein referred to operates differently in the case of non-resident citizens of the United States where there is a transfer by intestate law or a legacy which is general or residuary than in the case of a transfer by a resident citizen of the State of New Jersey to persons of the same class, of a legacy which is specific, and therefore such acts are inoperative and void on the same grounds set out in the foregoing assignments of error.

9. Because the assessment of said tax referred to in the third assignment of error, under the acts therein referred to and under Chapter 151 of the Public Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, in the case of non-resident citizens of the United States operates differently than it does upon citizens of the United States who are specific legatees and upon next of kin and heirs-at law and general and residuary legatees, and therefore said statutes are inoperative and void on the same grounds as set out in the foregoing assignments of error.

79 10. Because as against the plaintiff in error and the other persons referred to in the third assignment of error the assessment of said tax referred to in said third assignment of error, under the acts therein referred to and under Chapter 151 of the Laws of 1914 and under Chapter 392 of the Laws of 1915, is made in a different manner and at a higher rate than on the transfer of stocks by intestate law or by bequests to specific legatees or general or residuary legatees of the same class referred to in Sec. 1 of the Act of 1909 therein referred to, as amended by Chapter 151 of the Laws of 1914, and amended by Chapter 392 of the Laws of 1915, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the constitutional provisions referred to in the foregoing assignments of error.

11. Because the assessment of said tax referred to in the foregoing assignments of error and the acts therein referred to violate the provisions of Sections 1977 and 1978 of the Revised Statutes of the United States (1 Federal Statutes Annotated, pages 791-792).

12. Because the assessment of the tax referred to in the foregoing assignments of error is made under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in the New Jersey corporation left by the said decedent, be-

cause said New Jersey corporation is incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and the charter of said company with reference to the
80 transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art. IV, Sec. 7, Paragraph 3.
Art. IV, Sec. 7, Paragraph 4.
Art, IV, Sec. 7, Paragraph 12.

13. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

14. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more than one object in contravention thereof.

15. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 12 of the Constitution of the State of New Jersey in that said law provides that an existing law or part thereof shall be made or deemed a part of the act and provides that an existing law and part thereof shall be applicable and does not insert such provision in said act.

81 16. Because there is no succession by virtue of the laws of the State of New Jersey on the transfer of the stock in New Jersey corporations held by a non-resident at the time of his death which is taxable pursuant to the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, and to so hold would violate the constitutional provisions hereinbefore referred to.

17. Because the stock hereinbefore referred to on the right of succession thereto, owned, held and descending as aforesaid, is not embraced within the property or transfers made taxable in the acts referred to in the foregoing assignments of error.

18. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, if construed to impose a tax such as has been levied, is unconstitutional, as it is a property tax and violates Article

IV, Section 9 of the New Jersey Constitution which provides that property shall be assessed for taxes under general laws by uniform rules according to its true value.

19. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional in that it violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

20. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax
82 under review purports to have been made, is unconstitutional and void in that it attempts to subject to taxation property, rights and the succession thereto and transfer thereof which cannot be subject to taxation by the State of New Jersey.

21. Because the said tax and the assessment thereunder is in divers other respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

22. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article I, Sec. 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

23. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV of the Amendments to the Federal Constitution because it will permit the State of New Jersey through its agencies to authorize an unreasonable search in violation of such constitutional provision.

24. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided and did not grant the prayer of the plaintiff in error for a revision and recomputation thereof.

25. Because the Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller assessed the tax as if the accelerated rates of taxation set forth by Sec. 1, Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws
83 of 1914, referred to the entire amount of the distributive share passing on the death of James J. Hill instead of the amount subject to the previous rate of taxation.

26. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that the said Comptroller in assessing said tax did not apply the accelerated rates to the New Jersey property passing to the distributees.

27. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller did not allow an

exemption of five thousand dollars, as provided by Sec. 1 of Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, page 267, on the legacy of the New Jersey assets passing to the beneficiary.

JOSEPH S. COULT,
*Attorney for and of Counsel With Plaintiff in Error.*

Read on application for writ of error the 31st day of Oct., 1918.

E. R. WALKER,
*Chancellor and President Judge of the New Jersey Court of Errors and Appeals in the Last Resort in All Causes.*

84 [Endorsed:] Supreme Court of the United States. 4461. Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, Plaintiff in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants in Error. On Writ of Error. Assignments of Error. Joseph Coult, Attorney for Plaintiff in Error, 763 Broad Street, Newark, N. J. Filed Oct. 31, 1918. Thomas F. Martin, clerk.

85 Supreme Court of the United States.

LOUIS W. HILL, Administrator of the Estate of James J. Hill, Deceased, Plaintiff in Error,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants in Error.

On Writ of Error.

*Prayer for Reversal.*

To the Honorable the Supreme Court of the United States:

And now comes Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, plaintiff in error, and prays for a reversal of the judgment of the Court of Errors and Appeals of the State of New Jersey entered on the 11th day of October, 1918, affirming the judgment of the Supreme Court of the State of New Jersey entered on the 25th day of April, 1918, affirming a certain appraisement and assessment of a transfer or inheritance tax brought up for review by virtue of a writ of certiorari issued out of the Supreme Court of the State of New Jersey; and he prays for a reversal of the afore-

said judgments of the Court of Errors and Appeals of the State of New Jersey and of the Supreme Court of the State of New Jersey, and that the tax assessed as aforesaid be set aside and for nothing holden.

JOSEPH COULT,
*Attorney for and of Counsel with Louis W. Hill, Administrator of the Estate of James J. Hill, Deceased, Plaintiff in Error, 763 Broad St., Newark, N. J.*

86 [Endorsed:] Supreme Court of the United States. 4461. Louis W. Hill, Administrator of the Estate of James J. Hill, Deceased, Plaintiff in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Reed, State Treasurer, Defendants in Error. On Writ of Error. Prayer for Reversal. Joseph Coult, Attorney for Plaintiff in Error, 763 Broad St., Newark, N. J. Filed Oct. 31, 1918. Thomas F. Martin, Clerk.

87 UNITED STATES OF AMERICA, *ss:*

To Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Errors and Appeals of the State of New Jersey, wherein Louis W. Hill, Administrator of the Estate of James J. Hill, deceased, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edwin Robert Walker, our Chancellor and Presiding Judge of the Court of Errors and Appeals of the State of New Jersey, this 31st day of Oct., in the year of our Lord one thousand nine hundred and eighteen.

E. R. WALKER.
*Chancellor, Presiding Judge of the Court of Errors and Appeals of the State of New Jersey in the Last Resort in All Causes.*

88 [Endorsed:] Supreme Court of the United States. 4461. Louis W. Hill, Administrator of the Estate of James J. Hill, Deceased, Plaintiff in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendant in Error. On Writ of Error. Citation. Joseph Coult, Attorney for Plaintiff in Error, 763 Broad St., Newark.

N. J. Due and legal service of the within citation acknowledged for both defendants this 31st day of October, 1918.

JOHN W. WESCOTT,
*Attorney General, Attorney for Defendants.*

89 State of New Jersey.

[Coat-of-Arms.]

Department of State.

In obedience to the commands of the within Writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

Witness my hand and the seal of the Court of Errors and Appeals, this First day of November, A. D., 1918.

[Seal of the Secretary of the State of New Jersey.]

THOS. F. MARTIN,
*Clerk.*

Endorsed on cover: File No. 26,817. New Jersey. Court of Errors and Appeals. Term No. 731. Louis W. Hill, Administrator of the Estate of James J. Hill, Deceased, Plaintiff in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer. Filed November 11th, 1918. File No. 26,817.

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# Supreme Court of the United States

OCTOBER TERM, 1918.

LAWRENCE MAXWELL and FULTON TRUST COMPANY, Executors of the Last Will and Testament of James McDonald, deceased,
*Plaintiffs-in-Error,*

*vs.*

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer,
*Defendants-in-Error.*

*No. 345.*

---

LOUIS W. HILL, Administrator of the Estate of James J. Hill, deceased,
*Plaintiff-in-Error,*

*vs.*

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer,
*Defendants-in-Error.*

*No. 731.*

---

**Brief for Plaintiffs-in-Error.**

These cases are brought to this Court by writ of error to the New Jersey Court of Errors and Appeals to review an affirmance by that Court of a judgment of the New Jersey Supreme Court which affirmed the assessment of a transfer inheritance tax assessed in each case by the Comptroller of the State of New Jersey in cases of non-resident decedents.

The Comptroller's assessment of the tax was originally reviewed in each case by a writ of certiorari allowed by the New Jersey Supreme Court.

## THE TAXING STATUTE

In both cases the taxes were assessed by the Comptroller under the New Jersey Statute, chapter 151 P. L. N. J. 1914, page 267; 1st Supp. Comp. Stat. of New Jersey, page 1538, which act amends chapter 228 P. L. N. J. 1909, page 325; 4 Comp. Stat. of New Jersey, page 5301, and provides as follows.

> A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:
>
> *First.* When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of the State.
>
> *Second.* When the transfer is by will or intestate law, of real property within this State, or of goods, wares and merchandise

within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, and the decedent was a non-resident of the State at the time of his death.

*Third.* When the transfer is of property made by a resident, or is of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment at or after such death.

*Fourth.* When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or from a non-resident decedent, when such non-resident decedent's property consists of real property within this State or of shares of stock of corporations of this State or of national banking associations located in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

All taxes imposed by this act shall be at the rate of five per centum upon the clear market value of such property, except as hereinafter provided, to be paid to the Treasurer of the State of New Jersey for the use of said State, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been

paid as hereinafter directed, for which an action of debt shall lie in the name of the State of New Jersey.

Property passing to churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions and organizations, organized under the laws of this State, or operating solely within this State, shall be exempt from taxation under this act and also property to the amount of five thousand dollars passing to a father, mother, husband, wife, child or lineal descendant born in lawful wedlock, brother or sister, or the wife or widow of a son, or the husband of a daughter, shall be exempt from taxation under this act, but no other exemption of any kind or character shall be allowed. Property transferred to a father, mother, brother or sister, or the wife or widow of a son, or the husband of a daughter, shall be taxed at the rate of two per centum on any amount in excess of five thousand dollars, up to fifty thousand dollars; two and one-half per centum on any amount in excess of fifty thousand dollars, up to one hundred and fifty thousand dollars; three per centum on any amount in excess of one hundred and fifty thousand dollars, up to two hundred and fifty thousand dollars, and four per centum on all amounts in excess of two hundred and fifty thousand dollars. Property transferred to any child or children, husband or wife, of a decedent, or to the issue of any child or children of a decedent, shall be taxed at the rate of one per centum on any amount in excess of five thousand dollars, up to fifty thousand dollars; one and one-half per centum on any amount in excess to fifty thousand dollars, up to one hundred and fifty thousand dollars; two

per centum on any amount in excess of one hundred and fifty thousand dollars, up to two hundred and fifty thousand dollars; and three per centum on any amount in excess of two hundred and fifty thousand dollars. Property passing to a child or children of any decedent, adopted in conformity with the laws of this State, or any of the United States, or of any foreign kingdom or nation, or to the issue of any such child or children, shall be taxed at the same rate with the same exemption up to five thousand dollars allowed as a child or children born in lawful wedlock, or the issue of any such child or children, and the same amount of tax shall be imposed upon and the same exemption up to five thousand dollars allowed to any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; *provided, however,* such relationship began at or before the child's fifteenth birthday, and was continuous for at least ten years thereafter; *provided, further,* that nothing in this act contained shall be construed to repeal or in anywise impair the provisions of an act entitled "An act to provide for the payment to counties of five per centum of transfer taxes collected," approved April twenty-first, one thousand nine hundred and nine, but the said act shall remain in full force and effect as though this act had not been passed.

The statute will be more clearly understood by omitting such parts as are not necessary in the consideration of the validity of the taxes under review.

1. A tax shall be and is hereby imposed upon the *transfer of any property,* real or

personal, of the value of $500 or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:

2. When the transfer is by will or intestate law of * * * *shares of stock of corporations of this state* * * * and the decedent was a non-resident of the State at the time of his death.

* * * *

All taxes imposed by this act shall be at the rate of five per centum upon the clear market value of *such property*, except as hereinafter provided.

* * * *

*Property transferred to any child* or children, husband or wife, of a decedent, or to the issue of any child or children of a decedent, shall be taxed at the rate of one per centum on any amount in excess of $5,000 up to $50,000; one and one-half per centum on any amount in excess to $50,000, up to $150,000; two per centum on any amount in excess of $150,000, up to $250,000; and three per centum on any amount in excess of $250,000.

A free reading of the taxing provision for the purpose of determining the character of the tax can be made as follows:

*A tax is imposed upon the transfer by will or intestate law of stock of corporations of this State (when) decedent was a non-resident. Such property transferred to any child shall be taxed at the rate of one per centum on any amount in excess of five thousand dollars, up to fifty thousand dollars, etc.*

## THE STATUTORY METHOD OF ASSESSMENT

The method of computation of the assessment in the case of a non-resident decedent is designated by the last paragraph of chapter 151 of P. L. N. J. 1914, page 273; 1st Supp. Comp. Stat. of New Jersey, page 1542, which provides as follows:

> A tax shall be assessed on the transfer of property made subject to tax as aforesaid, in this state of a non-resident decedent if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such non-resident decedent had been a resident of this state, and all his property, real and personal, had been located within this state, as such taxable property within this state bears to the entire estate, wherever situated; provided, that nothing in this clause contained shall apply to any specific bequest or devise of any property in this state.

This paragraph was re-enacted in an amendment of section 12 of the Taxing Act, being chapter 392 P. L. N. J. 1915, page 745; 1st Supp. Comp. Stat. of New Jersey, page 1542, previous to the death of the decedent in the Hill case, but there was no change in the paragraph, so the provisions of the statutes under review are the same in the two cases here submitted.

## LEGAL QUESTIONS RAISED

The levy of the tax under the method of assessment here under review is challenged under the Federal Constitution and statutes, as follows:

*First.*

It denies to citizens of other States the privileges and immunities granted to citizens of the State of New Jersey, in violation of paragraph 1, Sec. 2 of Art. IV. of the Federal Constitution, which reads as follows:

> 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

*Second.*

It denies to the plaintiffs in error, the deceased and those taking, either by will or intestacy, full and equal benefit of the laws for the security of property, and subjects them to penalties, taxes, licenses or exactions different from those granted to or imposed upon citizens of the State of New Jersey, in violation of Sec. 1977 of the U. S. Revised Statutes, 1. Fed. St. Ann. 791, which provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

*Third.*

It denies to the plaintiffs-in-error, the deceased and those taking, by will or intestacy, all citizens of the United States, the rights which are enjoyed by white citizens of the State of New Jersey to inherit, hold and convey personal property, in violation of section 1978 of the Revised Statutes of the United States, 1 Fed. St. Ann. 792, which provides as follows:

> All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.

*Fourth.*

It abridges the privileges and immunities of the plaintiffs-in-error, the deceased and those taking by will or intestacy, who all are citizens of the United States, and deprives them of their property without due process of law and denies to them the equal protection of the laws of New Jersey, in contravention of the Fourteenth Amendment of the Federal Constitution, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

*The reasons that the foregoing provisions are violated may be summarized as follows:*

**(a) Under the computation provided for by the statute the transfer of property of non-resident decedents is taxed at a higher rate than that of a resident decedent for the same amount of property passing.**

**(b) The tax is assessed on the transfer of personal and real estate not located within the state and over which the State of New Jersey does not exercise any right of taxation.**

**(c) The tax violates the essential quality of taxation which requires that taxes be imposed upon a rule of uniformity.**

The questions under the Federal Constitution and laws were raised, in the first instance, in the reasons submitted to the New Jersey Supreme Court, first for the allowance of the writ of certiorari, and then on the hearing before the Court. Those reasons are stated in the record, Maxwell case, p. 21; Hill case, p. 17. In the Hill case, a protest was made and an affidavit submitted to the Comptroller (Record, Hill case, p. 11).

## FACTS IN THE MAXWELL CASE

James McDonald, the decedent in the Maxwell case, died January 13, 1915, owning stock in the Standard Oil Company, a New Jersey corporation, and certain other New Jersey corporations, valued at $1,114,965, leaving an entire estate of $3,969,333.25, including some real estate located in the State of Idaho. Of the gross estate, $279,813.17 went to pay debts and expenses of

administration. Mr. McDonald was a citizen of the United States and left a will and codicil (Maxwell Record, p. 7), which were admitted to probate by the Supreme Court of the District of Columbia. Letters testamentary were issued to the executors therein named, Lawrence Maxwell, a citizen of the State of Ohio, and Fulton Trust Company, a New York corporation (Maxwell Record, p. 19). None of the beneficiaries under the will were residents of New Jersey (Maxwell Record, p. 19). The main beneficiaries were all citizens and residents of states of the United States other than the State of New Jersey. Under the will, the wife takes by specific legacies; the other beneficiaries are specific and general legatees not related to the deceased and a son and two grandchildren, who take the residuary estate. Mr. McDonald's will is somewhat complicated, but a construction of its involved features is not necessary because the plaintiffs-in-error have accepted as correct for the purpose of this tax the construction of the will adopted by the Comptroller.

## FACTS IN THE HILL CASE

James J. Hill died May 29, 1916, intestate, a resident and citizen of the State of Minnesota, leaving him surviving his widow and nine children. Under the laws of Minnesota, Mrs. Hill inherited one-third of the real and personal estate and each of the children two-twenty-sevenths. The entire estate descending amounted to $53,814,762, which included real estate located

outside of the State of New Jersey, and principally in Minnesota and New York, valued at $1,885,120. The only property the transfer of which was subject to taxation in New Jersey was stock in the Northern Securities Company, a New Jersey corporation, valued at $2,317,564.68. The debts and administration expenses of the estate were figured at $757,571.20.

## COMPUTATION OF THE TAX

In computing the taxes in both of these cases the Comptroller followed the statutory method of assessment heretofore quoted on page 7. In the Maxwell case he made his assessment in the manner set out in the agreed state of facts (Maxwell Record, p. 19), and in the opinion of the New Jersey Court of Errors and Appeals (Maxwell Record, p. 40), and in the Comptroller's bill and assessment (Maxwell Record, p. 3), assessing a tax of $29,071.68. In the Hill case the computation is explained in the Comptroller's assessment and bill (Hill Record, p. 8), where there is assessed a New Jersey tax of $67,018.43.

**The formula laid down by the statute is that the tax should be figured on the entire estate as if it were the estate of a resident of New Jersey, with all of decedent's property, real and personal, located there, the tax then being apportioned and assessed in the proportion that the New Jersey estate bears to the entire estate.**

## DISCRIMINATIONS

The assessment of the tax according to the statutory formula, above cited, in the cases under review, results in a greater tax for the transfer of property of the estate subject to the jurisdiction of New Jersey than for the transfer of an equal amount, in a similar manner, of property of a decedent who died a resident of New Jersey. In the Maxwell case the difference amounts to $7,414.20 and in the Hill case it amounts to $26,703.12. The assessments figured without considering the ratio provision are set out in detail in the appendix to this brief. (See Appendix A. and B.)

The cause of the inequality is that the tax is first figured on the entire estate wherever situated and is imposed under graduated rates, *viz.*, in the case of a wife or children the first $5,000 of property transferred is exempt, the next $45,000 is taxed at the rate of 1%, the next $100,000 at the rate of 1½%, the next $100,000 at the rate of 2%, and the remainder at the rate of 3%. The tax is figured on the individual succession, *viz.*, each legacy is figured separately. Where the legacies or shares are equal, the Comptroller, for convenience, usually bulks the figures in the bill. Where the legacy is sufficiently large to be taxed at the graduated rate, the statute, by including the entire estate of a non-resident, wherever situated, in the computation of the tax, figures it in part as rated above the primary rate. In making the computation, after arriving at the whole tax, the taking of the

proportion of the whole tax, of the property passing subject to the jurisdiction of the State of New Jersey, to the entire estate, is a taking of proportions of the property taxed at the different rates as they accelerate. To illustrate: Take the simple case of a non-resident leaving $500,000 to a child, 10% of which legacy is in stocks of New Jersey corporations. The respective methods as to residents and non-residents are as follows:

Statutory computation as to:

| NON-RESIDENT ESTATES. | | | RESIDENT ESTATES. | | |
|---|---|---|---|---|---|
| $ 5,000.00 | | exempt | $ 5,000.00 | — | exempt |
| 45,000.00 | 1% | 450.00 | 45,000.00 | 1% | 450.00 |
| 100,000.00 | 1½% | 1,500.00 | | | |
| 100,000.00 | 2% | 2,000.00 | Total $50,000.00 taxed at | | $450.00 |
| 250,000.00 | 3% | 7,500.00 | | | |
| Total $500,000.00 | | Total $11,450.00 | | | |

Tax on New Jersey assets 10% or $1,145.00.

A non-resident estate pays $650.00 more tax than the resident estate for the same amount of property passing.

The Court will see that in the suggested case by the following of the statutory method of computation a part of the tax finally fixed is, 10% of a part fixed at the rate of 1%, 10% of a part fixed at the rate of 1½%, 10% of a part fixed at the rate of 2% and 10% of a part fixed at the rate of 3%, while in the case where the decedent died a New Jersey resident all of the tax was figured at the rate of 1% on the entire estate passing and taxed with the exception of the $5,000 exemption.

Under the statutory method, in the suggested case the average tax in New Jersey figures out 2.29%, in that of a resident estate it figures out at 1%, the rate fixed by the first section of the act.

The reason for this inequality is that the proportion of the entire estate to the New Jersey estate is not proportionate with the proportion of the entire tax (assessed as if the deceased had died a resident of New Jersey and all his property, real and personal, were located here) to the New Jersey tax.

**The discriminations between estates of residents and non-residents is real and not fancied, great and not small, substantial and not trivial, general and not occasional, and we believe always result in a greater tax against a non-resident than in a resident estate where an equal amount of property subject to the jurisdiction of New Jersey passes and is taxed.**

There may be some freak cases due to the amount of decedent's debts, specific bequests, or peculiar provisions of the will, which would be an exception, but we doubt if any such cases have ever occurred in practice.

Practically every case handled by the Comptroller will show that where the graduated rate is applied to the determination of a tax on non-resident estates there is a variance in the amount of the tax assessed by the Comptroller's method from the amount that would be assessed under the method used in cases of resident decedents. This variance will run from a few dollars in small estates to over $25,000 in the very large non-

resident estates taxed in New Jersey. In the Hill estate, it amounts to over $25,000. (See Appendix, B.) In an intestacy case it is always greater, never less.

For the purpose of seeing how the inequality with reference to methods of figuring the tax works in the case of the children, let us glance at the figures in the Hill estate.

Mr. Hill had nine children; each received $3,930,162.36. Each child's proportionate share of New Jersey assets is .043065 of this sum, or $169,252.44.

The Comptroller, computing each share separately would figure the tax on each share as follows:

| | | |
|---|---|---|
| | $ 5,000.00 | Exempt |
| 1% on | 45,000.00 | $ 450.00 |
| 1½% on | 100,000.00 | 1,500.00 |
| 2% on | 100,000.00 | 2,000.00 |
| 3% on | 3,680,162.36 | 110,404.87 |
| | | $114,354.87 |
| Per cent. of New Jersey property... | | .043065 |
| New Jersey tax..... | | $ 4,924.69 |
| Each child receives two-twenty-sevenths of the New Jersey assets of $2,317,564.68, which amounts to.... | | $171,671.46 |

The tax as to each child should be assessed as follows:

| | | |
|---|---|---|
| | $ 5,000.00 | Exempt |
| 1% on | 45,000.00 | $ 450.00 |
| 1½% on | 100,000.00 | 1,500.00 |
| 2% on | 21,671.46 | 433.43 |
| Tax | | $2,383.43 |

Thus each child stands the difference between $4,924.69 and $2,383.43, or $2,541.26, if the tax is figured by the statutory method.

In the foregoing computation we have not deducted from each of the shares of the children the proportion of the deductions for debts, administration expenses, etc., amounting to $757,571.20, to which each of the distributees would be entitled; the deduction for said expenses is the proportion thereof that the amount of the New Jersey assets bears to the entire estate, *viz.*, .043065.

By this computation, it is shown that in so far as the children's shares are concerned, the Hill estate is paying almost twice the amount of tax that would have been paid by it had Mr. Hill been a resident of the State of New Jersey and had he died leaving as his entire estate the New Jersey stock.

By an examination of the figures, the Court can readily see that approximately .93 of the tax on each child's share is figured at the .03 rate.

The average rate of tax figured in the manner provided for by the statute is .028; the average

rate under the second computation is .013. Thus the beneficiary of a non-resident bears a tax which is .015 greater than that figured for a resident.

Had Mr. Hill died a resident of the State of New Jersey and had his estate other than the New Jersey stocks been invested in real estate situated without the State of New Jersey, the tax on each child's share would have been assessed the same as we have designated in our method of computation, and it would have figured out at $2,383.43.

But Mr. Hill being a non-resident and the foreign property being taken into consideration, each child has to stand a tax of $4,924.69.

Whichever way it is desired to figure it, the state is charging the Hill estate a higher tax for the transmission of $2,317,564,68 in property than it charges a resident estate for two reasons:

1. Because Mr. Hill was a non-resident.

2. Because Mr. Hill happened to have large properties in states other than the State of New Jersey.

Undoubtedly, the State of New Jersey is profiting because of Mr. Hill's property situated without the State of New Jersey.

### Proper Method of Assessing Tax.

The method which would be used if there were no statutory formula is first to determine the proportion of the legacy which is paid in New Jersey securities and then assess the tax at

the New Jersey rate instead of assessing the tax at the New Jersey rate upon the whole estate as if that of a resident, and then taking the proportion of the tax which the New Jersey estate bears to the entire estate. This method would be the taking of the proportion of each legacy which the New Jersey estate bears to the entire estate and assessing separately the tax on that portion of each legacy which it is assumed will be paid in New Jersey securities.

The tax is not to be assessed on estates of any particular size and the graduated rates do not apply to the size of the estate, but are assessed on the legacies, and the graduated rates apply to the legacies of New Jersey stock.

This method—which we submit is the proper one—is adopted in principle in New York State, as shown by the decision in the case of *In Re Porter's Estate,* 124 N. Y. Supp., 676. By chapter 310 of the Laws of 1908 of the State of New York, section 220 of the Transfer Tax Law of that State was amended by adding a new provision. This new provision is as follows:

> 2-a Whenever the property of a resident decedent, or the property of a non-resident decedent within this state, transferred by will, is not specifically bequeathed or devised, such property shall, for the purposes of this act, be deemed to be transferred proportionately to, and divided *pro rata* among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

The New York Court holds that the expense of administration and debts of the entire estate should be divided *pro rata* between the New York estate and the entire estate, citing *In Re Matter of Grosvenor,* 193 N. Y., 652, 86 N. E., 1124.

**The transfer of foreign real estate is taxed.**

The inequality in the different methods of assessing the tax is accentuated when we consider the inclusion of a non-resident's real estate situated outside the State of New Jersey in assessing the tax on the estate of a non-resident of New Jersey, and its exclusion in assessing the tax in the estate of a resident.

Let us take an illustration where a resident and a non-resident hold exactly similar property, *viz.,* $100,000 in foreign real estate and $100,000 in New Jersey stocks, and the property in each case is inherited by one son.

The tax in the case of the resident would be figured by the Comptroller on the New Jersey stock only and as follows:

| | | |
|---|---|---|
| $ 5,000 | | Exempt |
| 45,000 | @ 1% | $450 |
| 50,000 | @ 1½% | 750 |
| Total $100,000 | Taxed at | $1,200 |

The tax in the case of a non-resident would be figured on both the real and personal property and would be as follows:

| | | |
|---|---|---|
| $ 5,000 | | Exempt |
| 45,000 | @ 1% | $ 450 |
| 100,000 | @ 1½% | 1,500 |
| 50,000 | @ 2% | 1,000 |
| Total $200,000 | Taxed at | $2,950 |

**The proportion of the entire estate to New Jersey stocks being 50%, the tax would be one-half of $2,950, or $1,475, or $275 more than in the case of a resident on the same amount of property passing and similarly situated.**

| | |
|---|---|
| The average percentage of tax in the case of the non-resident estate is | .01475 |
| and of the resident estate | .01200 |
| and the increased rate of per cent. of the non-resident estate amounts to | .00275 |

In showing this inequality, it is not necessary to take an estate taxed at the graduated rate. We may take the case of a widow who lives in New Jersey and who inherits personal property invested in New Jersey stock valued at $5,000 and a summer cottage located in New York, valued at $500. Her exemption would cover $5,000 in personalty and no tax would be assessed on the transfer of the foreign real estate.

If the same widow were held to be a resident and citizen of New York, the tax would be figured as follows:

| | |
|---|---|
| Personal estate | $5,000 |
| Real estate | 500 |
| | $5,500 |
| Exemption | 5,000 |
| Estate subject to tax of 1% | $500.00 |
| Tax on entire estate | 5.00 |

The tax assessed would be the proportion of New Jersey estate to the entire estate, thus:

$5,500)$5,000(.909

.909 of the $5.00 tax is $4.54

Thus the non-resident estate would have to pay this $4.54 tax where the resident estate would pay nothing, while the same amount of property, similarly situated, passed to the same beneficiary.

Even in its application to collaterals who are taxed at 5%, the act discriminates. If we have an estate holding $250 in New Jersey stock and $250 in personal or real estate not subject to the jurisdiction of New Jersey, and this property is left by a decedent not a resident of New Jersey, the tax would be figured at 50% of $25, although in the estate of a New Jersey resident who left only $250 to collaterals, no tax would be assessed; and if the resident left $500, $250 of which was in real estate outside of New Jersey and $250 in New Jersey stock, his estate would not be taxed.

**In the case of a non-resident decedent, the exemption of $5,000 allowed by the statute should be deducted from the proportion of the property passing to each person taking by inheritance which is represented by property taxable in New Jersey, instead of being deducted from the entire share, without regard to what part of the legacy is property the transfer of which is taxable in New Jersey.**

There can be no doubt of the just construction of the proviso for exemption. The State of New Jersey can only tax the property passing pursuant to the laws of New Jersey, and if so, in order to treat non-residents' estates on an equal basis with residents' estates, the full exemption should be allowed against the amount of New Jersey property passing, either actually or theoretically, to each person inheriting. This is the method adopted in Massachusetts. *Attorney-General* v. *Barney* (1912), 211 Mass., 134, 97 N. E. Rep., 750.

Under the statutory method of assessing the tax, there is a further discrimination between those taking by general bequest or devise from a non-resident and those taking by specific bequest or devise from a non-resident and also those taking in either manner from a resident. This particularly offends against the Fourteenth Amendment.

To illustrate, take the case of a son who receives a specific legacy in New Jersey securities. He is taxed at a lesser rate than a son who receives an equal amount under a general legacy.

In the Maxwell case before the Court the widow, who takes a specific legacy in New Jersey

stocks, pays less on that legacy than the son pays for an equal amount of property. To illustrate this inequality and in order to simplify the figures, let us take the case of a non-resident decedent who died leaving an estate of $500,000, $100,000 in Standard Oil Company (New Jersey) stock, being specifically bequeathed to the widow, and the only other taxable part of the estate, consisting of $100,000 in stock of the Standard Oil Company (New Jersey), going to a son, the residuary legatee, who takes the entire estate other than the $100,000 bequest in Standard Oil Company stock to the widow. In so far as New Jersey assets are concerned, both the son and the widow take an equal amount. The widow's tax and that of the son, if the decedent was a resident, as computed by the Comptroller would be:

| | | |
|---|---|---|
| Exempt | $5,000 | |
| 1% on | 45,000 | $ 450 |
| 1½% on | 50,000 | 750 |
| Widow's tax ..... | | $1,200 |

The son's tax would be computed by the Comptroller as follows:

| | | |
|---|---|---|
| Entire estate, other than specific bequests | $400,000 | |
| Exempt | 5,000 | |
| 1% on | 45,000 | $ 450 |
| 1½% on | 100,000 | 1,500 |
| 2% on | 100,000 | 2,000 |
| 3% on | 150,000 | 4,500 |

Total tax if decedent were a resident and all his property situated in New Jersey ..... $8,450.00
Proportion of New Jersey property to entire estate (excepting specific bequests), 25% New Jersey tax..... $2,112.50
Widow's tax (*supra*)..... 1,200.00
Difference in favor of widow..... 912.50

As an appendix to this brief we have added some further examples of discrimination (see Appendix C).

## OPINION BELOW NOT SUSTAINED BY AUTHORITIES CITED

The Court below attempted to justify the inequalities resulting from the statutory method of assessing the tax by the State's right to create a formula for equalizing taxation as between residents and non-residents, relying upon the cases of

*Adams Express Co.* v. *Indiana*, 165 U. S., 255;
*Adams Express Co.* v. *Ohio*, 165 U. S., 194;
*Adams Express Co.* v *Kentucky*, 166 U. S., 171;
*St. Louis & W. R'y Co.* v. *Arkansas*, 235 U. S., 350.

See *Maxwell Record*, p. 28.

The case of *Adams Express Co.* v. *Ohio* involved a property tax on property located in Ohio, assessed by that state. The purpose of the law was to tax the property in the State of Ohio. The statute expressly provided for the filing of a return by the company taxed, which should

show in detail the number of shares of its capital stock, the fair market value, the entire real and personal property of the company and where located, the value thereof as assessed by taxation, its gross receipts from whatever sources, and the business done in the State of Ohio, giving the receipts of each office in the state and the length of line of its rail and water routes over which the company did business within and without the state. This report went to a board created by the statute, who were to assess the tax under the following rule:

> "In determining the value of the property of said companies in this state, to be taxed within the state and assessed as herein provided, said board shall be guided by the value of said property as determined by the value of the entire capital stock of said companies, and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said companies within the State of Ohio, in the proportion which the same bears to the entire property of said companies, as determined by the value of the capital stock thereof, and the other evidence and rules as aforesaid."

The apportionment of the assessment was to be among the several counties in which the company did business, in the proportion that the gross receipts in each county bore to the gross receipts in the state. The amount assessed for each county was certified to the county auditor and placed by him upon the duplicate to be assessed and the tax thereunder collected the same as taxes were assessed and collected

on other personal property, the rate of taxation to be the same as that on other property in the local taxing district. The valuation of the real estate, situated in the state, so given, was required to be deducted from the total valuation as fixed by the board.

It will thus be seen that the plan of the act was to provide for the equal taxation of property within the state. Justice Fuller, in his opinion, at p. 227, says:

> "There is here no attempt to tax property having a situs outside of the state, but only to place a just value on that within. Presumptively all the property of the corporation or company is held and used for the purposes of its business, and the value of its capital stock and bonds is the value of only that property so held and used."

This case cited by the Court is more of an authority in favor of the method of assessing the tax proposed by the plaintiffs-in-error than that which has been sustained by the Court below.

**The distinction between the case cited and the case before the Court is that the apportionment in the case cited is of the assets before the assessment of the tax, and in the case before the Court the assessment of the tax is on the entire property within and without the state and the tax is apportioned thereafter.**

*Adams Express Company* v. *Indiana (supra)* was a case similar to *Adams Express Company* v. *Ohio*. The tax under review was one assessed under an act which provided for the apportionment of the value of the stock of corporations within and without the state in order to fix a

tax upon the tangible property within the state. To determine the amount upon which the company was to pay the tax, the statute provided that after fixing the value of the stock the proportion of that value was taken which the gross receipts in the state bore to the entire receipts of the company, and from the amount represented by this percentage was deducted the assessed value of all taxable property which had been assessed in the state, and the balance was the amount of the assessment on which the tax was levied. In so far as railroad, express, telephone and telegraph companies were concerned, in order to obtain the value of the property within the state, the proportion of the entire line of the company to the line in the state was taken. The property representing the value within the state as fixed by this proportion was then divided among the taxing districts in the proportion of the length of the line in the taxing district to the length of the line in the state, and from that amount was deducted the property which was otherwise taxed in the district, and the balance was the amount of the assessment of the company in the particular taxing district. The tax was objected to because the method of its assessment differed from that of taxing individual residents. The Court held that the tax against residents was upon intangible as well as tangible property, and the method adopted by the act was only a different method of ascertaining the same thing.

This case, like the Ohio case, is not a precedent to sustain the tax here under review. The whole scheme of the act was to ascertain what was within the state, and when this was ascertained the rate was the same for residents as for non-residents. While, no doubt, in the carrying out of this tax some were taxed more than others on the same amount of property by reason of this proportion having a different effect, still this was only incidental, as the method specifically provided for ascertaining what the property within the state was, and when this was ascertained the rate of taxation was the same.

The explanation which we have made with reference to the Ohio and Kentucky cases is directly applicable to the case of *St. Louis S. W. R. Co.* v. *Arkansas* (*supra*), in which Mr. Justice Pitney wrote the opinion. The tax was on the privilege, in so far as foreign corporations were concerned, of doing intrastate business. Returns somewhat similar to those stated in the other cases were required to be filed and the tax commission determined the proportion of the outstanding capital stock when represented by the proporty and business of the corporation within the state. In disposing of the question of the charge that it was unequal or double taxation, the learned Justice said, at p. 365, 59 L. Ed., 273:

> "No attempt is made to show that the classification of corporations adopted in Act No. 112 is not a reasonable one, or that in any respect corporations of the class

to which plaintiff-in-error belongs are discriminated against in favor of domestic corporations, as was the case in *Southern R. Co.* v. *Greene*, 216 U. S., 400; 54 L. Ed., 536; 30 Supreme Court Rep., 287; 19 Ann. Cas., 1247."

These cases demonstrate that there is nothing wrong in the Legislature's requiring, in the case of a transfer tax, the submission of a statement of the entire assets of the estate in order to ascertain what proportion of the New Jersey assets should be applied to each legacy.

For the purpose of ascertaining the property within the state subject to the tax, the Legislature may take into consideration property of non-residents within and without the state, but it may not go beyond that purpose and include the foreign property in the property the transfer of which is to be taxed.

The Lower Court bases its conclusion that the discrimination and inequality resulting from the statutory method of assessment is vindicated by the conclusion of Mr. Justice Pitney in *St. Louis S. W. R. Co.* v. *Arkansas*, without noticing his reference, at p. 366, to the case of *Southern Railway Co.* v. *Greene*, 216 U. S., 400; 54 L. Ed., 536. This was a case which reviewed a tax upon the right of foreign corporations to do business in the State of Alabama. The tax was not assessed on resident corporations. In holding the tax invalid as a violation of the Fourteenth Amend-

ment, the Court, at pp. 412 and 413, 54 L. Ed., p. 540, said:

> "The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation."

Further on, at p. 417, L. Ed., 541, he said:

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification." (Citing cases.)

The proposition hereinafter discussed with regard to Article IV. of the Federal Constitution not protecting the estate of deceased persons from discrimination, does not apply as an argument as against the legislation here under review being unconstitutional under the Fourteenth Amendment, as the classification of personal representatives of non-resident decedents and their beneficiaries separate from personal representatives and beneficiaries of resident decedents is not a classification but an arbitrary selection.

The opinion of the New Jersey Supreme Court (and the State in its contentions) makes much capital of the fact that non-resident estates are

accorded a favored situs because they are exempt from any imposition upon the transfer of bonds and mortgages, commercial paper, bank deposits, and debts, which are assets, the transfer of which the Legislature has made subject to taxation in the estates of resident decedents, and not in the case of non-resident decedents. This fact is not an argument, because it is within the province of the Legislature to tax the transfer of such part of the non-resident estate the situs of which is within this state as it sees fit, provided the non-resident estate is not discriminated against in favor of residents, and no capital can be made of the fact that the state has not seen fit to exercise the limit of its power in taxing transfers of non-resident estates.

It is clear why property of the character referred to has not been taxed. The difficulty and uncertainty of collection is undoubtedly the main reason.

*This question is entirely one for the Legislature, and an argument based thereon has no place before the Court.*

This manner of favoring non-resident estates is of no benefit to non-resident estates holding only New Jersey stocks. The favorite discrimination benefits only those who have the exempt class of assets. There is the same discrimination as between residents and non-residents as before.

We submit that the conclusion of the Court below in its opinion based on the rule cited in 37 Cyc., 736, is an erroneous deduction from a

properly stated rule, and we quote the rule to substantiate our claim:

> "It is a matter of common experience that absolute equality in the imposition of a tax is not attainable. Nor is this the meaning of the constitutional provision. All that it requires is an aim and intention on the part of the Legislature, in framing the tax law, to approximate to the ideal of absolute equality as closely as the nature of the subject and the necessities of practical administration will permit. Hence the courts will not pronounce a statute invalid on this ground unless it appears that it was framed on a plan or principle not calculated to produce equality and uniformity, or that its administration will result in such flagrant injustice as to evidence an entire disregard of the constitutional requirement."

We believe that we have demonstrated thoroughly that the legislation here presented, which discriminates, has not been framed as closely to absolute equality as the nature of the subject and the necessities of administration will permit, and that the frame and plan of the statute is based on a principle which is not calculated to produce equality or uniformity, and that the administration of section 12 of the Taxing Act does result in flagrant injustice and evidences a disregard of the constitutional requirement. Neither the Court below nor counsel for the state has demonstrated any reason why the method of assessing the tax against estates of non-residents which we have urged would not conform to all the requirements of the afore-

mentioned rule. If our plan does conform to this requirement, does not that of itself demonstrate that the rule is not complied with in the method adopted by the Legislature by enacting sec. 12 of the Taxing Act?

As we have shown, a discrimination wherein the non-resident is assessed at a higher rate of per cent. is not a minor fault, such as was commented upon in *Magoun* v. *Illinois Trust and Savings Inst.*, 170 U. S., 283; 42 L. Ed., 1037, and other cases. The discrimination here is one where a higher rate of tax is imposed without specifically so stating in so many words. The higher rate is imposed by reason of stating a formula which results in a higher rate.

**By the use of the method of assessment against non-resident estates prescribed by section 12 of the Taxing Act, either the rate of tax is increased in non-resident estates or the transfer of property over which this state has no jurisdiction is taxed. The right to do either is clearly unconstitutional.**

## TRANSFER OF PROPERTY LOCATED WITHOUT THE STATE OF NEW JERSEY TAXED IN VIOLATION OF THE FOURTEENTH AMENDMENT

**The taxes under review are levied on the transfer of property located without the State of New Jersey and over which said state does not have jurisdiction and their imposition violates the Fourteenth Amendment of the Federal Constitution by depriving the plaintiffs-in-error of their property without due process of law.**

*International Paper Co.* v. *Massachusetts*, 246 U. S., 135; 62 L. Ed., 624.

*Looney, Attorney-General,* v. *Crane Co.,* 245 U. S., 178; 62 L. Ed., 230.
*Western Union Telegraph Co.* v. *Kansas,* 216 U. S., 1; 54 L. Ed., 355.
*Louisville Ferry Co.* v. *Kentucky,* 188 U. S., 385; 47 L. Ed., 513.
*Beers* v. *Edwards,* 84 N. J. L., 32.
*Carr* v. *Edwards,* 84 N. J. L., 667.

The objection that we make to the assessment of a tax upon a basis which includes assets within and without the jurisdiction of the taxing states is explained clearly in the recent decisions of this Court. These cases hold that an excise tax imposed on a foreign corporation as a condition to the right to do business within the State, based upon the amount of its authorized capital stock, was an exercise by the taxing authority of jurisdiction over property located and used beyond the State's jurisdiction and therefore violated the Fourteenth Amendment.

*International Paper Co.* v. *Massachusetts* (*supra*).
*Looney, Attorney-General,* v. *Crane Co.* (*supra*).

In the case of *Beers* v. *Edwards* (*supra*), following *Louisville Ferry Company* v. *Kentucky* (*supra*), and also in the case of *Carr* v. *Edwards* (*supra*) the New Jersey courts have recognized that to include in the property on which the tax is assessed property which was located without the State of New Jersey, and over which the State had no jurisdiction for purposes of taxation, would deprive a taxpayer of property without due process of law.

**DENIAL OF IMMUNITIES AND PRIVILEGES GUARANTEED BY ARTICLE IV OF THE FEDERAL CONSTITUTION.**

The method of assessment objected to denies to the decedents, James McDonald and James J. Hill, their respective executors and administrators and those inheriting from said decedents, all citizens and non-residents of New Jersey, an immunity enjoyed by resident decedents and those inheriting from them, *viz.*, the transfer of stock or other property subject to the jurisdiction of the State of New Jersey, at a rate not greater than that set forth in sec. 1 of the Taxing Act, which is the rate that applies to resident decedents.

The right to take, hold and dispose of property and the right to be exempted from higher taxes and impositions are privileges and immunities recognized by Par. I., Sec. 2 of Article IV. of the Federal Constitution, hereinbefore quoted, the section applying to property rights and includes the immunity of the enjoyment of estates in succession.

*Paul* v. *Virginia*, 8 Wall., 168; 19 L. Ed., 357.

*Ward* v. *Maryland*, 12 Wall., 418; 20 L. Ed., 449.

*Blake* v. *McClung*, 172 U. S., 239; 43 L. Ed., 432.

*Corfield* v. *Coryell*, 6. Fed. Cases, 546.

*Magill* v. *Brown*, 16 Fed. Cases, 408, at p. 428.

*State of Missouri* v. *Julow* (1895), 29 L. R. A., 257, at p. 259.

The scope of the cited provision of the Federal Constitution is clearly stated in *Paul* v. *Virginia (supra)*.

Justice Field, in his opinion, says (p. 180):

> "It was undoubtedly the object of the clause in question to place the citizens of each state upon the same footing with the citizens of other states, so far as the advantages resulting from citizenship in those states are concerned. *It relieves them from the disabilities of alienage in other states;* it inhibits discriminating legislation against them by other states; it gives them the right of free ingress into other states, and egress from them; *it insures to them in other states the same freedom possessed by the citizens of those states in the acquisition and enjoyment of property* and in the pursuit of happiness; and it secures to them in other states the equal protection of their laws. It has been justly said that no provision in the constitution has tended so strongly to constitute the citizens of the United States one people as this. *Lemmon* v. *People*, 20 N. Y., 607.
>
> "Indeed, without some provision of the kind removing from the citizens of each state the disabilities of alienage in the other states, and giving them equality of privilege with citizens of those states, the Republic would have constituted little more than a league of states; it would not have constituted the Union which now exists."

The word "privileges" as used in the Constitution extend so as to apply to exemptions from taxation.

*State* v. *Betts*, 24 N. J. L., 555, at p. 557.

*L. & N. R. R.* v. *Gaines,* 3 Fed. Rep., 266, at p. 278.

*Tatem* v. *Wright,* 23 N. J. L., 429.

In the case last cited the New Jersey Court, in dealing with this question of the right to tax foreign insurance companies, says (p 444):

> "That the privileges and immunities of the citizen, embraced in this clause of the constitution, comprehend an exemption from higher taxes or impositions than are paid by other citizens of the state, may be safely assumed. It was so held in the case of *Corfield* v. *Coryell,* 4 Wash. C. Rep., 371."

The courts of California have held that under the Federal Constitution a state inheritance tax act could not discriminate between resident and non-resident beneficiaries of the same class against the latter.

*In re Johnson,* 139 Cal., 532; 73 Pac. Rep., 424.

See also

*In re Estate of Mahoney,* 133 Cal., 180; 65 Pac., 389; 85 Am. St. Rep., 155,

and

*In re Estate of Leland Sanford,* 126 Cal., 112; 54 Pac., 259; 45 L. R. A., 788.

See dissenting opinion of Harrison, *J.*, in the case last cited, which sets forth the constitutional reasons for the invalidity of the tax.

## THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT IS DENIED BY THE ASSESSMENT OF THE TAXES UNDER REVIEW.

**The Constitution requires that the law shall have the attribute of equality of operation and that the constituents of each class be affected alike, viz: that the law operates equally and uniformly upon all persons similarly circumstanced.**

*Magoun* v. *Illinois Trust and Savings Bank*, 170 U. S., 283; 42 L. Ed., 1037.
*Gulf C., etc. Co.* v. *Ellis*, 165 U. S., 150; 41 L. Ed., 666.
*Cotting* v. *Godard*, 183 U. S., 79; 46 L. Ed., 92.
*State of Missouri* v. *Julow* (1895), 29 L. R. A., 257.
*In re Van Horne*, N. J. E., 600.
*Meehan* v. *Board of Excise of Jersey City*, 64 Atl. Rep., 689.
*Middleton* v. *Middleton*, 54 N. J. E., 692.

The classifications adopted by the present taxing act as amended in 1914 are of two general kinds—*first*, by relationship, and *second*, by the amount of property passing. Under the first classification, husbands, wives, children or their issue are taxed on a graduated scale at the lowest rate. Fathers, mothers, brothers, sisters, etc., are taxed at higher graduated rates. Collaterals and strangers are taxed at the flat rate of five per cent. All of these methods of classification are proper, and if left by the taxing act to operate without any such statutory method of computation as is here objected to, the tax would not be objectionable.

In *Magoun* v. *Illinois Trust and Savings Bank (supra)* the Court dealt with and upheld the Illinois inheritance tax law providing for graduated rates according to the size of legacy and rates that varied in accordance with relationship of the beneficiary.

The Court in that case reviewed carefully the earlier cases with reference to equality under the Fourteenth Amendment, and in commenting upon these cases says (p. 292; 42 L. Ed., 1042):

> "The clause of the Fourteenth Amendment especially evoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.' Kentucky Railroad Tax Cases, 115 U. S., 321 (29; 414). It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. *Hayes* v. *Missouri*, 120 U. S., 68 (30; 578)."

P. 294; U. S.; p. 1043 L. Ed.

> "In other words, the state may distinguish, select, and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not with-

out limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition,' said Mr. Justice Bradley in *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U. S., 232-240 (33; 892-896).

"And Mr. Justice Brewer in *Gulf, Colorado & Santa Fe Ry. Co.* v. *Ellis,* 165 U. S., 150 (41; 666), after a careful consideration of many cases, said: 'It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.'"

P. 296; 1044 L. Ed.

"And if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates 'equally and uniformly upon all persons in similar circumstances.'"

P. 300, or 1045 L. Ed.

"That rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money, it is on the right to inherit, and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is

> not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat 'all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.'"

The rule against discrimination under the Fourteenth Amendment is peculiarly illustrated by the difference in the tax in the case of a general legatee under a non-resident's will and a specific bequest under a non-resident's will, or a specific or general bequest under a resident's will, as illustrated on pages 23-24.

A number of cases on classification were cited by the counsel for the State in the Court below, and we shall refer to and give our view upon them in anticipation of their being cited here.

The case of *Board of Education* v. *Illinois*, 203 U. S., 553; 51 L. Ed., 314, affirming *In Re Speed's Estate*, 216 Ill., 23; 74 N. E., 809, is distinguishable on two grounds. The constitutional provisions under Article IV. does not apply to corporations. As to the Fourteenth Amendment, it simply holds that a separate classification for resident and foreign corporations is proper.

*Citizens' Telephone Co.* v. *Fuller*, 229 U. S., 322; 57 L. Ed., 1206, was a case where the telephone companies making a profit of less than $500 a year were exempt from a tax levied in lieu of the ordinary property tax. Clearly the Legislature had the right to grant this exemption. Residents and non-residents were treated alike.

In *Beers* v. *Glynn*, 211 U. S., 477; 53 L. Ed., 290, where a New York non-resident owner of personalty paid a tax on it only if he happened also to own New York realty, the fault was not with the provisions of the act for the levying of the tax but in the machinery of collection. When there was no New York realty, the Court held that there was nothing from which to collect the tax.

In the case of *District of Columbia* v. *Brooke*, 214 U. S., 138; 53 L. Ed., 941, the act was the regulation of the collection of an assessment and not the consideration of the method of assessment.

We might rest our argument on the foregoing cases on the citation of *State Board of Assessors* v. *Central R. R. Co*, 48 N. J. L., 146, at 337, where Justice Depue says: "Every system of taxation consists of two parts—the one relating to the assessment (the designation of the persons or things which shall be the subjects of taxation, and the apportionment of taxation among such persons or things in the ratio prescribed by law); the other the collection of taxes by the enforced payment thereof."

The latter provisions are the ones which the Federal Constitution shall not interfere with, but our case comes under the head of designation of the persons or things subject to taxation and the apportionment of the burden. It relates to the imposition of the tax and not to the collection.

In reference to the claim that the State has the right to use different methods of collection against non-resident estates, we certainly have no objection against a different method of collection of the tax being provided by the state in the case of non-residents, provided the levy is the same in the case of non-residents as in the case of residents for the same amount of property passing to those related in the same degree. Surely, the Legislature can provide for different methods of collection for non-residents than for residents.

*Plumber* v. *Coler,* 178 U. S., 115; 44 L. Ed., 998. Reference is made to the fact that the state may lawfully measure or fix the tax by referring to the value of the property passing, although some of the property passing is not subject to a *property tax* by the state. This, of course, was the case of a resident, and the transfer of United States bonds was taxed, and it merely sustained the right to tax the transfer, although the state itself could not impose a tax on the bonds themselves. There is nothing in point in this case.

*Travelers Insurance Company* v. *Connecticut,* 185 U. S., 364; 46 L. Ed., 949. It is argued that as this case holds it is proper, under the Federal Constitution, to separate and classify stockholders of a corporation as between resident and non-residents there can be no reasonable objection to the grouping together of successors of property within this state of non-

resident decedents and resident decedents. The Travelers Insurance Company case is easily distinguished. There the tax was based upon the value of the property, *viz.*, the market value of the stock. The rate for non-residents was fixed at 15 mills, the value, of course, fluctuating in accordance with the demand for the stock. The tax paid by the non-residents went to the state for the support of the state government. The resident tax went to the municipality wherein the stockholder lived, and the rate fixed was the annual tax rate of his municipality. The rate varied throughout the state, running up to 21 mills, so that in fixing at 15 mills, the average of the local tax rates, the Legislature was not discriminating against non-residents. The non-resident paid a tax at a lower rate than some residents, depending on where the resident lived.

Objection was also made because residents were allowed to deduct, in the ascertainment of the value of the security, the value of the real estate within the state. This was merely incidental and was done for the purpose of preventing the municipality from collecting a double tax, as the municipality had already received the tax on the real estate within the state. The tax on the non-resident stockholders went for the support of the state and not the local municipality, and there was not occasion for the exemption in cases of non-resident stock, as no tax was paid direct to the state for local real estate held by non-residents. There was no attempt in the Travelers Insurance Company case to assess

property of non-residents not situate within the state, as there is in the case before the Court. The basis of assessment did not have as a part of it the value of the non-resident taxpayers' property situate without the state.

## THE FEDERAL CONSTITUTION PROTECTS THE RIGHT TO TRANSMIT PROPERTY ON DEATH AGAINST DISCRIMINATION BETWEEN RESIDENT AND NON-RESIDENT DECEDENTS.

Counsel, on behalf of the Comptroller, lays great stress on his contention that the right to have property transmitted on death is not protected by the Federal Constitution because the person from whom the property is transferred is dead and cannot appeal to its provisions.

To support this proposition, counsel states that it is the right or privilege of the beneficiaries to succeed to and receive the property of the decedent, pursuant to the permission granted by the state, that is taxed, and, as the act in express terms, or express principles, does not distinguish between resident and non-resident beneficiaries, the provisions of the Federal Constitution are not infringed.

*This point is not directed to the plaintiff-in-error's claim of the benefit of the Federal Constitution on the ground that the act taxes property without the state and over which this state has no jurisdiction, and the further claim under the Fourteenth Amendment that tax is not equally laid under the rule as to uniformity.*

*Undoubtedly, the executors and the beneficiaries may claim the protection of these provisions on their own behalf as well as on behalf of the decedents.*

We shall address our argument to the question of discrimination and denial of equal privileges and immunities

The cases cited in the Court below to the effect that the transfer inheritance, succession or legacy tax was *on the right to succeed* and not *on the right to transmit* were not cases which turned on that contention. They were cases distinguishing between a property tax and a transfer tax, and the words with reference to right to succeed were used to show that the tax was not a property tax, and any further distinction was not necessary for the decision of the case. Many cases might be cited which refer to the *right to transmit* as well as to the *right to succeed.*

The Supreme Court of New Jersey in *Howell* v. *Edwards,* 96 Atl. Rep., 186, quotes Justice Garrison in *Neilson* v. *Russell,* 76 N. J. L., 27, as follows:

> "'Examination will show that the consensus of judicial opinion is that the impost we are considering is not a tax upon property, but is a premium or privilege upon the devolution of property—in fine, a succession tax—and that, as such, it rests fundamentally upon the sovereign right of a state to withold, and hence to limit, the right of testamentary disposition or of intestate succession.'"

The opinion in the case of *Attorney General* v. *Stone*, 209 Mass., 186; 95 N. E., 395, at p. 397, properly states the proposition as follows:

> "This is an excise tax, imposed not only upon the right of the owner of property to transmit it after his death, but also upon the privilege of his beneficiaries to succeed to the property there dealt with." (Citing cases.)

The United States Supreme Court, in its opinion, in *United States* v. *Perkins*, 163 U. S., 625, at p. 628; 41 L. Ed., 288, says:

> "In this view, the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the state has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the state has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the state that it becomes the property of the legatee."

We might again refer to the words of Justice Field in *Paul* v. *Virginia* (*supra*, p. 37).

Mr. Justice Pitney, now of this Court, in *Brennan* v. *United Hatters*, 73 N. J. L., 729,

speaking for the Court of Errors and Appeals of New Jersey, at p. 742, said:

"The common law has long recognized as a part of the boasted liberty of the citizen the right of every man to freely engage in such lawful business or occupation as he himself may choose, free from hindrance or obstruction by his fellow-men, saving such as may result from the exercise of equal or superior rights on their part—such, for instance, as the right of fair competition in the like field of human effort—and saving, of course, such other hindrance or obstruction as may be legally excused or justified.

"This right is declared by our constitution to be unalienable. The first section of the bill of rights sets forth that 'All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.'

"As a part of the right of acquiring property there resides in every man the right of making contracts for the purchase and sale of property, and contracts for personal services, which amount to the purchase and sale of labor. It makes little difference whether the right that underlies contracts of the latter sort is called a personal right or a property right. It seems to us impossible to draw a distinction between a right of property and a right of acquiring property that will make a disturbance of the latter right any less actionable than a disturbance of the former. In a civilized community which recognizes the right of private property among its institutions, the notion is intolerable that a man should be protected

by the law in the enjoyment of property once it is acquired, but left unprotected by the law in his efforts to acquire it. The cup of Tantalus would be a fitting symbol for such a mockery. Our constitution recognizes no such notion."

Surely, one of the privileges which our Constitution intended to protect against discrimination between residents and non-residents was that of transmission of property on death.

The right to transmit property on death is a property right, and this right affects the value of the property to the deceased in his lifetime.

If the Legislature might discriminate between resident and non-resident decedents and limit the non-resident in his right to dispose of property within the state on his death, or appropriate part or all, surely the property would not be worth as much to him as it would be worth to a resident.

Certainly, the guarantee of an equal right to the pursuit of happiness protects the non-resident husband as against the resident husband in the equal right to have his property transmitted on his death to his wife or his children.

**If the State's contention is well founded, then there is no Federal constitutional provision insuring equality as between resident and non-resident decedents, who are citizens of states of the United States, other than the State of New Jersey, in the right of equal application of the laws of descent and transmission of property on death.**

This Court may well hesitate before confirming to the Legislature any such arbitrary power. Its exercise would shake the very foundations of this government.

This provision is nearly as important in keeping the Union together as is the commerce clause of the Federal Constitution. The denial of its protection would permit the State Legislature to provide by law for appropriation, on death, of the property of a non-resident citizen within the state's jurisdiction, and to not so provide as to its own residents.

The Court will keep in mind the distinction, between the idea of the sovereignty of the state, under the Roman law and that under the English law determined from the Bill of Rights.

That our argument is sound may be demonstrated by the fact that the right of the state to tax on death the descent or distribution of property within the state to an alien, where the property of citizens of the state is not so taxed, has been upheld where not in contravention of the treaties of the United States with other countries.

*Mager* v. *Grima*, 8 Howard, 490; 12 L. Ed., 1169.

It was held in violation of a United States treaty in the case of *Succession of Rixner*, 48 La. Ann., 552. See report of this case in 32 L. R. A., 177, and cases therein collected and stated in note.

The *Treaty with Great Britain*, U. S. St., 31, p. 1939; 7 Fed. St. Ann., p. 615, by Article II.

provides that citizens of Great Britain shall have full power to dispose of their personal property by testament and their heirs and legatees shall succeed to their personal property * * * paying such duties only as the citizens or subjects of the country wherein the property lies shall be liable to pay in like cases.

Is this Court going to deny to non-resident citizens what is granted to aliens by treaty protection?

But the right has not been claimed by any states other than California, and when claimed in that state has not been sustained. (See *In Re Johnson*, 239 Cal., 532; 73 Pac. Rep., 424, *supra*.)

*The most complete answer made by the plaintiffs-in-error is that the executors or administrators are non-resident citizens, and the transfer, if on the right to receive or succeed, is a tax against their taking; and the executors or administrators of a non-resident are invariably non-residents, and surely so if their citizenship is determined by the domicile of the decedent.*

It must be borne in mind that it is only the universal succession from the decedent to his executors or administrators that can be taxed in the case of a non-resident.

*Carr* v. *Edwards*, 84 N. J. L., 667.

Justice Swayze, in that case, says, at p. 669:

> "The only special right given by the New Jersey law in case of a non-resident decedent is the right of an executor or administrator to succeed to the property having

its situs in New Jersey. Unless, therefore, the Legislature meant by the act of 1909 to tax this right—the transfer by grace of our law of the property having its situs here from the decedent to his representative—its enactment was futile as far as the estates of non-residents are concerned. We cannot attribute such futility to a legislative act."

The claim made by the State is vicious and highly technical and if sustained may yield great abuse.

Its claim does not take into consideration that the taxing act under review taxes the making of a conveyance by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. The defendants-in-error must admit that the Federal Constitution should protect a non-resident decedent in his lifetime against a discrimination in this right.

Nor does the argument of counsel for the defendants-in-error take into consideration the case where an irrevocable will is made upon consideration. Surely this is also a right protected against discrimination by the Federal Constitution.

In the Court below, counsel for the defendants-in-error take issue with the claim of the plaintiffs-in-error that the fraction of a non-resident decedent's estate over which the State of New Jersey has jurisdiction is the whole estate in the State of New Jersey and the only estate the

transfer of which is subject to a tax, and submitted the following proposition:

> "The theory on which the application of the progressive rate is justified does not insist that the total wealth required for its imposition shall be within the jurisdiction of the state. The method of applying it to a fraction of total wealth within the jurisdiction, which will make its application comparable to its application to an estate of like total all within the jurisdiction, assures equality as between resident and non-resident estates and is clearly within the power of the Legislature, that imposes it and the theory which applies it."

This proposition put forth by the State is unsound, because, in carrying it out, the State must necessarily impose a tax on property not within its jurisdiction, which it has not the right to do. To illustrate the State's proposition: It in effect says that Mr. Rockefeller, by reason of his great wealth, must pay a larger tax on his property subject to jurisdiction in New Jersey than is required to be paid by some other non-resident who owns a like amount of property subject to the jurisdiction of New Jersey but who is not as wealthy as Mr. Rockefeller.

To demonstrate the justice of the claim of the defendants-in-error, counsel makes the argument that if the properties of a non-resident were split up so as to have their situs in many states (and we suppose that his proposition includes the supposition that the several states imposed taxes under laws similar to those of the State of New Jersey), the non-resident decedent's estate

would not bear the burden of taxation at the high graduated rates. This would be true as to all of the states of which decedent was a non-resident, but it would not be true as to the state in which he resided; there his entire personal estate would be bulked and the graduated rates, if in effect in his home state, applied.

## CONCLUSION.

We have seen that the plan of the last paragraph of section 12 of the taxing act, which provides a method of assessing the tax on the transmission of non-resident estates, is designed to assess a larger tax against such transmission than is provided by the first section of the taxing act for the transmission of property of non-resident decedents. If this be denied, then, in the case of non-residents, the act is designed to assess a tax on the transmission of property situated without the State of New Jersey and over which the State of New Jersey has no jurisdiction for the purposes of taxation, and which is not transmitted through the aid and assistance of any law of the State of New Jersey.

By the imposition of the tax in question the Constitution of the United States is violated as follows:

**(a) By the inclusion of real estate situate without the State of New Jersey in the computation of the tax on the transfer of a non-resident's estate, and the exclusion thereof in the computation of the tax on the transfer of a resident's estate.**

(b) By assessing on the entire estate of a non-resident a tax figured at the graduated rates and then apportioning the tax according to the proportion of property situated in New Jersey, the transfer of which is subject to a tax, to the entire estate of decedent, instead of first apportioning among those taking (and before figuring a tax on their shares) the New Jersey property subject to a transfer tax and then assessing the tax thereon.

(c) By deducting from the entire share of the non-resident decedent passing to the beneficiary, the exemption of each beneficiary in the non-resident's estate, instead of making the deduction from each beneficiary's share in the New Jersey assets. By the deduction of the amount of exemption from his entire share, each beneficiary receives only a proportion of the exemption.

We respectfully submit that the method of assessment provided for in the New Jersey statute violates the Federal Constitution for the reasons we have given, namely:

(a) It taxes non-residents more than it does residents and therefore gives to residents privileges and immunities denied to residents.

(b) It taxes the transfer of a non-resident's property over which the State of New Jersey has no jurisdiction while it expressly omits like property of residents, that is, non-resident real estate, and thereby deprives the non-resident of his property without due process of law.

(c) It provides for a tax which bears unequally and therefore is not imposed upon a uniform rule and it therefore denies to non-residents the equal protection of the laws.

Section 1 of the act imposing the tax on the transfer of property in the cases before the Court, was passed subsequent to the passage of section 12 of the Taxing Act, which provides for the method of assessment, as to non-residents, of a tax levied under section 1. At the time the last paragraph of section 12 was incorporated in the Taxing Act it did not provide for any tax against relations not collaterals such as a widow, children or grandchildren of a decedent; therefore it is incumbent on this Court to declare the whole act unconstitutional as to non-resident estates passing to those relations.

We further submit that, failing in our contention as to the unconstitutionality of section 1 by reason of the computation provided by section 12 of the Taxing Act, the statutory computation provided for by the last paragraph of section 12 should be held unconstitutional, following the reasoning laid down in the California court in the case of *In Re Johnson*, 139 Cal., 132; 73 Pac. Rep., 424, which holds that the Court will apply the statute to non-residents in the same manner as it is applied to residents, and the tax should be re-assessed in accordance with the views herein submitted.

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LAWRENCE MAXWELL,
E. C. LINDLEY,
*Of Counsel.*

# APPENDIX A.

The assessment of the tax in the McDonald estate, after setting forth the description of the stock as shown in Record, p. 3, should be as follows:

| | Legacies and Estate Disbursements | Am't paid with N. J. Securities | N. J. Tax |
|---|---|---|---|
| Tax on specific legacy in New Jersey stocks to widow (see Record, p. 3) | | | $ 3,933.71 |
| Tax on specific legacy in New Jersey stocks to stranger (Record, pp. 3-4) | | | 4,111.48 |
| Debts and expenses | $ 270,812.17 | | |
| out of which .2159232 should be paid with New Jersey securities, or | | $ 58,474.85 | |
| Legacies to beneficiaries in the 5% class | 356,761.36 | | |
| out of which .2159232 is paid from New Jersey stocks, or | | 77,093.03 | |
| Tax thereon @ 5% | | | 3,851.65 |
| Legacy of widow in estate (other than New Jersey stocks specifically bequeathed) | 294,712.99 | | |
| out of which .2159232 is paid from New Jersey stocks, or $63,635.27 | | | |
| Statutory exemption .. 5,000.00 | | 63,635.27 | |
| Tax @ 2% on $63,635.27 amounts to | | | 1,272.70 |
| Residuary estate taxed in this proceeding as passing to the son and two grand-children (the exemptions and shares at the different rates are tripled because there are three beneficiaries sharing alike) | 3,718,121.79 | | |
| of which sum .2159232 is paid in New Jersey stocks, or | | 586,907.71 | |
| Three exemptions | $ 15,000.00 | | |
| 1% on | 135,000.00 | $1,350. | |
| 1½% on | 300,000.00 | 4,500. | |
| 2% on | 136,907.11 | 2,738. | |
| | | | 8,588.00 |
| | $3,668,419.31 | $786,056.96 | $31,057.48 |

Total legacies, debts and expenses amounting to $3,668,419.31 are being paid or satisfied with New Jersey stocks to the amount of .2159232, or $786,056.96.

| | |
|---|---|
| The tax assessment in the McDonald estate is | $30,971.68 |
| Tax computation as above | 31,057.48 |
| Difference | $ 7,414.20 |

The above computation is proved, because .2159232 of the total of $3,640,419.21 is $786,050.96, the total of the New Jersey assets on which the foregoing tax is figured.

## APPENDIX B.

The assessment of the tax in the Hill estate should be as follows:

| Number of Shares | Name of Company | Market Value | Total |
|---|---|---|---|
| 34141 | Northern Securities Company ..... | 96.00 | $3,277,536.00 |
| Scrip | " " " ..... | —— | 32.62 |
| | | | $3,277,564.62 |
| | Appraised value of estate $3,814,762.00) 2,317,564.62 (.043065 | | |
| | Deductions 757,571.20 | | |
| Deduct .043065 of 757,571.20 to determine share of debts and expenses paid out of New Jersey assets..... | | | $ 32,624.80 |
| Entire New Jersey assets distributable to widow and children as follows: | | | |
| ⅓ to widow .....$ 761,646.62 | | | |
| ⅔ to children ..... 1,533,293.35 | | | |
| | | | $2,294,939.91 |
| Assessment of tax as to widow: | | | |
| Exempt .....$ 5,000.00 | | | |
| 1% on ..... 45,000.00 | | $ 450.00 | |
| 1½% on ..... 100,000.00 | | 1,500.00 | |
| 2% on ..... 100,000.00 | | 2,000.00 | |
| 3% on ..... 511,646.62 | | 15,349.39 | |
| Widow's tax on .....$761,646.62 | is | $19,299.39 | Tax $19,299.39 |
| Assessment of tax as to children: | | | |
| 9 Exemptions .....$ 45,000.00 | | | |
| 1% on ..... 405,000.00 | | $ 4,050.00 | |
| 1½% on ..... 900,000.00 | | 13,500.00 | |
| 2% on ..... 173,293.35 | | 3,465.86 | |
| Children's tax on .....$1,533,293.35 | is | $21,015.86 | Tax $21,015.92 |
| Total New Jersey tax..... | | | $40,315.31 |

Tax assessed was $67,018.43. Difference, $26,703.12.

## APPENDIX C.

The following examples and comparisons are extracted from an article written by Joseph F. McCloy, of the New York Bar, printed in the "Trust Companies" magazine in July, 1917. They comment on the ratio provision in the New Jersey Transfer Inheritance Tax Statute here under review.

### EQUATION "A"

| Non-Resident "X" | | Non-Resident "Y" | |
|---|---|---|---|
| Widow sole beneficiary, property in New Jersey, within Statute. | $5,000.00 | Widow sole beneficiary, property in New Jersey within Statute.. | $5,000.00 |
| Ford car in State of domicile.... | 500.00 | No other property at State of domicile ..... | |
| Total..... | $5,500.00 | Total..... | $5,000.00 |
| Exempt in New Jersey..... | $5,000.00 | Exempt in New Jersey..... | $5,000.00 |
| Taxable at 1%..... | $500.00 | | |
| Proportion of tax of $5.00 due upon New Jersey shares according to Ratio Provision of New Jersey Statute, approximately ..... | $4.45 | No tax due New Jersey if no Ford car in State of New York. | |

### EQUATION "B"

| Non-Resident "X" | | Resident "Y" | |
|---|---|---|---|
| Facts same as "A" | | Facts same as "A" (But decedent a resident) | |
| Tax ..... | $4.45 | No tax. | |

### EQUATION "C"

| Non-Resident "X" | | Non-Resident "Y" | |
|---|---|---|---|
| Substitute real property for Ford car in "A" | | Facts same as in "A" | |
| Tax ..... | $4.45 | No tax. | |

### EQUATION "D"

| Non-Resident "X" | | Resident "Y" | |
|---|---|---|---|
| Widow sole beneficiary, property in New Jersey, within Statute. | $5,000.00 | Widow sole beneficiary, property in New Jersey, within Statute.. | $5,000.00 |
| Real property outside of New Jersey ..... | 500.00 | Real property outside of New Jersey ..... | 500.00 |
| Total..... | $5,500.00 | Total..... | $5,500.00 |
| Exempt in New Jersey..... | 5,000.00 | | |
| Taxable at 1%..... | 500.00 | Exempt in New Jersey if decedent a resident..... | $5,500.00 |
| Proportion of tax of $5.00 due upon New Jersey shares according to Ratio Provision of New Jersey Statute, approximately ..... | $4.45 | No tax. | |

**Some Anomalies of Ratio Taxation.**

The State of New Jersey admittedly grants no privilege of succession to real property beyond its territorial limits. No more does it grant such privilege of succession to personal property of non-residents having no *situs* there.

The anomaly produced by the ratio provision becomes luminous in the case of a farmer who being domiciled in the taxing State owns two farms valued at $5,000 each, one lying within and the other without the State boundaries, and devises both to his widow. Granting an exemption of $5,000 there is no tax. But if the decedent be domiciled in the foreign State, the widow is called upon under the operation of the ratio provision to pay a succession tax of $25 upon the same farm within the taxing State. The right of succession to the farm within its boundaries is undoubtedly granted by the taxing State. The right of succession to the farm in the foreign State is not. Wherein is the value of the right to succeed to the farm within the State boundaries increased by the value of the right to succeed to the farm beyond? If it is not increased by and in no way dependent upon the value of the farm beyond the State boundaries, why tax in one case and not in the other?

The argument against taxing succession to land in another State or taking its value into consideration in taxing land in the State of location is equally cogent applied to the cattle grazing there, if the succession taxed is in case of a non-resident decedent.

In fine, not only does the statute in question operate to impose taxes based upon property beyond the jurisdiction in one case and not in the other, but in so doing the ratio provision compels the accordance in case of the non-resident decedent of only *proportionate exemptions* and *proportionate graduated* amounts upon which the tax is computed.

A homely analogue to the situation created by the *Ratio Provision* in the statute under consideration is found in the case of the crafty shopkeeper who sells the same merchandise at one price to a shopper from the street and at a higher price to the carriage customer. The State, in the above instance, regulates the universal successions to property within its jurisdiction by imposing a higher premium upon the succession to such property equal in value when passing in case of a wealthier non-resident than when passing in case of a poorer non-resident, the successors being of like relationship. In the final analysis it is found that there is no more justification in ethics for the one case than there is legal justification for the other. Condemnation of the practice rests upon the same foundation in both cases:

***Classification of customers or taxpayers based upon circumstances which are extraneous considered in their relation to the value of the merchandise sold or to the extent of the protection afforded, is fundamentally unsound.***

Not only does elementary morality require equality of treatment in either case, but self-interest also would suggest that those with ample means above all should not be discouraged in the business of investment by such discrimination.

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# Supreme Court of the United States

OCTOBER TERM, 1918.

LAWRENCE MAXWELL and FULTON TRUST COMPANY, Executors of the Last Will and Testament of James McDonald, deceased,
*Plaintiffs-in-Error,*

*vs.*

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer,
*Defendants-in-Error.*

*No. 245.*

---

LOUIS W. HILL, Administrator of the Estate of James J. Hill, deceased,
*Plaintiff-in-Error,*

*vs.*

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer,
*Defendants-in-Error.*

*No. 731.*

**Brief for Defendants-in-Error.**

## Statement.

The record in the Maxwell case, first above entitled as No. 245, brings before this Court the assessment of transfer tax against the estate of James McDonald by reason of the succession through the will of the said James McDonald, a non-resident decedent, to the ownership of stock in the Standard Oil Company, and certain other New Jersey corporations, valued at $1,114,965, out of an entire estate of $3,969,333.25. The tax was affirmed on certiorari by the New Jersey Supreme Court on an opinion by Mr. Justice Minturn (Case, page 26), and by the New Jersey Court of Errors and Appeals on the same opinion (Case, page 40).

James McDonald, the decedent, was a citizen of the United States and a resident, at the time of his death, in the District of Columbia. He died January 13, 1915, leaving a will and codicil which were duly admitted to probate before the Supreme Court of the District of Columbia, and letters testamentary thereon issued to Lawrence Maxwell and Fulton Trust Company of New York, the plaintiffs in error, who duly qualified and are now acting (Case, pages 17-18; Stipulation II and III).

The will with the codicil is set forth in full on pages 7 to 14 of the case.

The decedent left no property of any kind with *situs* in New Jersey except certificates of stock in six corporations organized under the laws of that State (Case, pages 18, 20; Stipulations IV and X).

Of the executors one, Lawrence Maxwell, is a citizen and resident of the State of Ohio and the other, Fulton Trust Company of New York, is a corporation organized and existing under the laws of the State of New York (Case, page 19; Stipulation VII).

None of the beneficiaries named in the will resided in New Jersey at the time of the death of the decedent (Case, page 19; Stipulation VIII).

The details of the stocks occasioning the assessment and of the tax imposed thereon appear in the case, pages 15 and 18-21.

The total amount of the tax assessed was $29,071.68. The method by which the tax was levied and assessed is disclosed by the Comptroller's return (Case, pages 3-4 and 19-20; Stipulation IX).

The record in the Hill case, secondly above entitled as No. 731, brings before this Court the assessment of transfer tax against the Estate of James J. Hill by reason of the succession by intestacy to the ownership of stock of a New Jersey corporation valued at $2,317,564.68, out of an entire estate of $53,814,762. The tax, so far as now before this Court, was affirmed on certiorari by the New Jersey Supreme Court on the authority of the Maxwell case (Case, pages 23-24), and by the New Jersey Court of Errors and Appeals (Case, page 32).

James J. Hill was a citizen and resident of the State of Minnesota. He died May 29,

1916, intestate, leaving him surviving his widow and nine children (Case, page 15).

Letters of administration were taken out by Louis W. Hill, plaintiff in error (Case, page 15).

The administrator is a citizen and resident of the State of Minnesota, and the beneficiaries are all citizens and residents of that State (Case, page 15).

The decedent left no property of any kind in New Jersey except certificates of stock in a corporation organized under the laws of that State (Case, page 15).

The details of the stock (and scrip) occasioning the assessment and the tax imposed thereon appear in the record (Case, pages 8, 15 and 16).

The total amount of the tax assessed was $67,018.43. The method by which the tax was levied and assessed is disclosed by the Comptroller's return to the writ (Case, page 8).

Both cases involve the application of the ratio method of the New Jersey transfer tax laws upon succession to the property in New Jersey of non-resident decedents, the Maxwell case being one of testacy and the Hill case being one of intestacy, and the question in each case is as to the validity of the New Jersey ratio method applied in the assessment of transfer tax upon the succession to property in New Jersey of non-resident decedents.

## The Legislation Involved.

This tax was imposed pursuant to authority of Chapter 228 of the Laws of 1909, entitled "An Act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April 20, 1909 (P. L. 1909, 325; 4 Comp. Stat., 5301), as amended by Chapter 151 of the Laws of 1914, approved on April 9, 1914 (P. L. 1914, page 267).

The brief for the plaintiffs in error refers to the Law of 1909 as still further amended by Chapter 392 of the Laws of 1915, approved April 23, 1915 (P. L. 1915, page 745; Comp. Stat., Supp. of 1915, 1541). This last amendment did not receive the signature of the Governor until the 23rd day of April, 1915, nearly three months after the death of the decedent McDonald, although long before the death of the decedent Hill. This last amendment is not of importance in this argument as the final clause of section 12, as amended in 1914, is not changed, and, so far as the property of a non-resident decedent is liable to transfer tax, its liability is not affected in rate by Chapter 392 of the Laws of 1915.

The Act of 1909 was a revision, and, *prior to amendment*, imposed a transfer tax at the rate of five per centum per annum on the clear market value, if of $500 or over, upon the transfer of any property, real or personal, by will or the intestate laws of the State, in trust

or otherwise, to persons or corporations in the following cases:

*First.* When the transfer was by will or by the intestate laws of the State from any person dying seized or possessed of property while a resident of the State.

*Second.* When the transfer was by will or intestate law, of property within the State, and the decedent was a non-resident of the State at the time of his death.

*Third.* When the transfer was of property made by a resident or non-resident, when such non-resident's property was within the State, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death.

*Fourth.* When any such person or corporation came into the possession or enjoyment, by a transfer from a resident or non-resident decedent when such non-resident's property was within this State, of an estate in expectancy of any kind or character which was contingent or defeasible, transferred by an instrument taking effect after the passage of the act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of the act.

It will be noted by reference to the title of the act that it applies to the transfer of property of *resident* and *non-resident* decedents, and that in defining the conditions under which the

tax was to be imposed, above set forth as First, Second, Third and Fourth, the first refers to *transfer by will or by the intestate laws of this State* from any person dying seized or possessed of property *while a resident of the State;* the second when the transfer is *by will or intestate law of property within the State* and the decedent was a *non-resident of the State* at the time of his death; the third relates to *the transfer of property made by a resident or non-resident, when such non-resident's property is within the State,* in the lifetime of such resident or non-resident but intended to take effect, in possession or enjoyment, after death; the fourth refers to the coming into the enjoyment of estates, in expectancy *by transfer from a resident or non-resident decedent when such non-resident decedent's property is within the State.*

The act, therefore, in title and definition emphasizes the distinction between the property of resident and non-resident decedents as well as the intention to tax transferees of the property of both.

*As to the property of resident decedents the act by its language reaches every transfer, by will or by the intestate laws of the State, from any person dying seized or possessed of the property while resident.*

*As to the property of non-resident decedents the act by its language reaches every transfer by will or intestate law (of any state or coun-*

*try), of property within the State at the time of the death of such non-resident decedent.*

As to the property of resident decedents, the test of liability to the tax is the transfer by will or the intestate laws of the State; as to the property of non-resident decedents, the test of liability to the tax is the transfer by will or intestate law of property having its *situs* within the State at the time of the death of the non-resident decedent.

The distinctions of the original Act of 1909, between transfers of the property of resident and non-resident decedents as well as the legislative intention to tax transferees of both, were not lessened by the amendments of 1914.

The first amendment of 1914 (P. L. 1914, p. 91) did not change the definitions of the property of either resident or non-resident decedents made subject to tax under the original Act of 1909, but introduced the taxation of direct inheritances for the first time in New Jersey. The ratio plan of applying the rate to transfers of property in the State of non-resident decedents, in section 12, was changed (except verbally) only by including in that term of the proportion relating to the entire estate of the non-resident decedents, his *real* property outside of the State, in apparent conformity to the suggestion of Mr. Justice Swayze in *Beers* v. *Edwards,* 84 N. J. L., 32.

The second amendment of 1914 (P. L. 1914, 267), redrafted the second sub-division of section 1, *confining the taxable property within*

*the State of non-resident decedents to real estate, tangible personal property and stock of New Jersey corporations and of National Banks located within the State.* An appropriate change in the language of the 12th section was at the same time introduced, making one term of the proportion for the application of the ratio method the "taxable property" within the State of the non-resident decedent, the term "taxable property" finding its definition in the amended sub-division of Section 1.

The ratio provision as found in section 12, as amended in 1914, applied in the assessment in the cases now before this Court, is in effect but not literally as follows:

> The tax to be assessed on the taxable property within the State of a non-resident decedent is to the entire tax which the estate of the non-resident decedent would have been subject to under this act if such non-resident decedent had been a resident of the State and all his property, real and personal, had been located within the State, as such taxable property within the State is to the entire estate wherever situated.

Under the second paragraph of Section 1 of the Act of 1909, as originally passed, the tax was imposed when the transfer was by will or intestate law of property within the State and the decedent was a non-resident at the time of his death. The earlier part of the first paragraph, section 12, of the original act, forbade the transfer on the books of New Jersey corporations by foreign executors, administrators or trustees of shares of stock standing on such

books in the name of a non-resident decedent or in the joint names of such a decedent and one or more persons, or in trust for a decedent, without the consent of the State Comptroller. *This plainly was to assure to the State the collection of the tax upon this particular species of property owned by non-resident decedents within the jurisdiction of the State, and did not bring under the imposition of the law any property not already included by the second paragraph of section 1.*

The revision of 1909 was approved April 20, 1909, but did not take effect until July 4th. Section 12 in this revision was taken from an earlier act of the same session approved April 17, 1909, and taking effect immediately, amending section 11 of the Act of 1894 (P. L. 1909, 236). This Act of April 17, 1909, first introduced into the New Jersey statute the method of assessment of property within the State of non-resident decedents made the subject of attack in the present case, although earlier in use without statutory warrant. (See *Tilford* v. *Dickinson*, 79 N. J. L., 302, reversed 81 N. J. L., 576, on the authority of *Dixon* v. *Russell*, *infra*, without disapproval of the views of the Supreme Court.)

The tax imposed by the original Act of 1909 was a straight tax of five per centum upon the clear market value of the property made liable, but, by exemption clauses, transfers to certain charitable corporations, a father, mother, husband, wife, child or children, or the lineal descendants thereof, brother or sister, or the

wife or widow of a son, or the husband of a daughter, were excluded. The act was in effect, so far as applicable to natural persons confined to collaterals and strangers, as had been all prior acts in New Jersey from the original one in 1892. Perhaps because the rate was flat and not progressive no attack was made upon it as in contravention of the Federal Constitution until after the amendment of 1914, which taxed direct inheritances and introduced the progressive rate. After such amendment the ratio provision was challenged in the present cases as in contravention of the State Constitution in certain particulars, as well as in contravention of the Federal Constitution, but was completely upheld by the State courts.

The transfer tax laws of New Jersey find their origin in a statute passed in 1892 (P. L. 1892, 206), and there has been much litigation concerning them, both as to matter of form and substance, in cases arising both before and since the amendments of 1914.

By these cases the State courts have determined that the tax imposed is not a property tax and is in no way controlled by the provisions of the State Constitution requiring that property shall be assessed for taxation under general laws and by uniform rules according to its true value; that the tax imposed by the Act of 1909 and its amendments is a tax upon the succession to property and effective against all property designated in the law which may be subject to the sovereign authority of the State, either by reason of

the residence of the decedent or the *situs* of the property; that the transfer of property, whether real or personal, of non-resident decedents, the *situs* of which is without the State, may not be lawfully subjected to a tax of the character imposed by this act; that the tax imposed by the act and its amendments is not a legacy tax but is a tax upon the succession by takers of the property, of resident or non-resident decedents, whether the succession is to the whole estate as a universal succession, or to the estate in New Jersey as a universal succession of the New Jersey executor or administrator, or the singular succession of a devisee or legatee, either under the intestate laws or testamentary disposition, and that the provisions for payment from the estate through executors or administrators are for the convenience and security of collection by the State; that the ascertainment of the tax upon the transfer of the property, real or personal, of non-resident decedents, the *situs* of which is in the State, by a proportional formula based upon the ratio of the property in the jurisdiction, or such part of it as the State elects to tax, to the entire estate of the non-resident decedent, does not subject the property of such non-resident decedent without the State to the tax under the law, but is a lawful and appropriate method of ascertaining the amount of the tax imposed by the act and its amendments upon the transfer of property of non-resident decedents within the jurisdiction of the State.

We do not deem it necessary to lengthen this brief by an extended examination of these authorities and content ourselves with citing the more important of the decisions:

*Neilson* v. *Russell,* 76 N. J. L., 27, 655, 131 Am. St., 673, 19 L. R. A. (N. S.), 887.

*Dixon* v. *Russell,* 78 N. J. L., 296; 79 N. J. L., 490.

*Tilford* v. *Dickinson,* 79 N. J. L., 302; 81 N. J. L., 576.

*Eastwood* v. *Russell,* 81 N. J. L., 672.

*Sawter* v. *Shoenthal,* 81 N. J. L., 197; 83 N. J. L., 499.

*Beers* v. *Edwards,* 84 N. J. L., 32.

*Carr* v. *Edwards,* 84 N. J. L., 667.

*Senff* v. *Edwards,* 85 N. J. L., 67.

*Hopper* v. *Edwards,* 88 N. J. L., 471.

*Howell* v. *Edwards,* 88 N. J. L., 134, affirmed 89 N. J. L., 713.

*In re Diehl's Estate,* 88 N. J. Eq., 310, affirmed 103 Atl. Rep., 822.

It will appear later in the argument in this brief that the decisions of New Jersey courts are in harmony with the views of this Court as to succession taxes.

## Argument.

The sole question in these cases relates to the validity of the ratio provision outlined in the foregoing description of the New Jersey Statutes for the application of taxes on the succession to the New Jersey property of estates of non-resident decedents.

The record contains many grounds of objection urged against the legality of the tax because of alleged conflict with the State Constitution, all of which have been disposed of by the judgment of the court of last resort of the State sustaining the tax. No attempt has been made in the brief of the plaintiffs-in-error to argue any questions other than those arising out of the claimed conflict with the provisions of the Federal Constitution.

The orderly way to take up the argument of these cases seems to be to consider the character of the taxes under criticism before proceeding into particular discussion of the specific application of the statutes to the cases in hand. No attempt has been made in this brief to follow the order of presentation of the brief of plaintiffs-in-error. That proceeds on the assumption of definite discriminations claimed to be the necessary result of the application of the ratio provision to the succession to the New Jersey property of estates of non-resident decedents, which, if the character of the tax and the purpose of the legislation be definitely understood, cease to be discriminations, but which, even if they were demonstrably discriminatory in fact, are not, because of the character of the tax and the application of the statute, in conflict with any rights of plaintiffs-in-error arising out of the provisions of the Federal Constitution.

Understanding the character of the tax and its application to the individuals on whom its burden is imposed, it will then be in order to examine the rights of such individuals with ref-

erence to the guarantees of the Federal Constitution.

If no discrimination in fact results from the operation of the statutes under examination the complaints of the plaintiffs-in-error must be refused consideration. If such complaints, under analysis, relate to individuals who are so circumstanced as to be either entirely without the guarantees of the Federal Constitution or so grouped in classes as to be properly subjected to different treatment in the legislative application of the taxing power, the complaints must fail. It can be demonstrated, it is believed, that the New Jersey transfer tax act does not in fact discriminate as between the succession to the estates of resident decedents and to the New Jersey property of non-resident decedents, and it can further be demonstrated that, if under any view such a discrimination can be found, it is not in violation of any right guaranteed by the Federal Constitution or other than the result of appropriate classification within legislative discretion.

## I.

### As to the nature of succession taxes and the authority of the State to levy such taxes.

There is no provision in the Federal constitution, or indeed in the New Jersey constitution, which secures the right to anyone, resident or non-resident, to control or dispose of his property after death, nor the right to anyone, whether kindred or not, to take it by inheritance.

Blackstone refers to the death of the occupant as an abandonment of property:

> "For, naturally speaking, the instant a man ceases to be, he ceases to have any dominion; else, if he had a right to dispose of his acquisitions one moment beyond his life he would also have a right to direct their disposal for a million ages after him; which would be highly absurd and inconvenient. All property must, therefore, cease upon death, considering men as absolute individuals, and unconnected with civil society; for, then, by the principles before established the next immediate occupant would acquire a right in all that the deceased possessed. But as under civilized governments, which are calculated for the peace of mankind, such a constitution would be productive of endless disturbances, the universal law of almost every nation (which is a kind of secondary law of nature) has either given the dying person a power of continuing his property, by disposing of his possessions by will, or, in case he neglects to dispose of it, or is not permitted to make any disposition at all, the municipal law of the country then steps in and declares who shall be the successor, representative or heir of the deceased; that is, who alone shall have a right to enter upon this vacant possession in order to avoid that confusion which its becoming again common would occasion. And further, in case no testament be permitted by the law, or none be made, and no heir can be found so qualified as the law requires, still, to prevent the robust title of occupancy from again taking place, the doctrine of escheats is adopted in almost every country; whereby the sovereign of the state, and those who claim un-

der his authority, are the ultimate heirs, and succeed to those inheritances to which no other title can be found.

"The right of inheritance or descent to the children and relations of the deceased seems to have been allowed much earlier than the right of devising by testament. We are apt to conceive, at first thought, that it has nature on its side; yet we often mistake for nature what we find established by long and inveterate custom. It is certainly a wise and effectual, but clearly a political establishment; since the permanent right of property, vested in the ancestor himself, was no *natural* but merely a *civil* right. * * *

"With us in England till modern times, a man could only dispose of one-third of his movables from his wife and children; and in general no will was permitted of lands till the reign of Henry the Eighth, and then only of a certain portion; for it was not till the restoration that the power of devising real property become so universal as at present.

"Wills, therefore, and testaments, rights of inheritance and successions, are all of them creatures of the civil or municipal laws, and accordingly are in all respects regulated by them; every distinct country, having different ceremonies and requisites to make a testament completely valid; neither does anything vary more than the right of inheritance under different national establishments." 2 *Blackstone's Commentaries*, 10.

The Courts of this country have almost universally accepted this doctrine, and no Court has more consistently upheld it than the Supreme Court of the United States.

In *Mager* v. *Grima*, 8 Howard 490, the law of Louisiana, imposing a tax on 10% on legacies when the legatee was neither a citizen of the United States nor domiciled in that State, was upheld by this Court in an opinion by Mr. Chief Justice Taney:

> "Now, the law in question is nothing more than an exercise of the power which every State and sovereignty possesses of regulating the manner and terms upon which property, real and personal, within its dominion may be transmitted by last will and testament or by inheritance, and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take either real or personal property situate within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the State. In many of the States of this Union at this day real property devised to an alien is liable to escheat. And if a State may deny the privilege altogether it follows that when it grants it it may annex to the grant any conditions which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien subject to a deduction of 10% for the use of the State."

Again, in *Frederickson* v. *Louisiana*, 64 U. S. 445, Mr. Justice Campbell, speaking for this Court, in upholding the Louisiana legacy tax as not in contravention to the provisions of the third article of the treaty of 1844 between the United States and Wurtemburg, said (p. 447):

> "This Court, in *Mager* v. *Grima*, 8 Howard 490, decided that the act of the legis-

lature of Louisiana was nothing more than the exercise of the power which every State and sovereignty possesses of regulating the manner and terms upon which property, real and personal, within its dominion may be transmitted by last will and testament or by inheritance, and of prescribing who shall and who shall not be capable of taking it. The case before the District Court in Louisiana concerned the distribution of the succession of a citizen of that State and of property situated there."

In *United States* v. *Perkins*, 163 U. S. 625, this Court held that personal property bequeathed by will to the United States is subject to inheritance tax under the laws of the State of New York, and in the course of the opinion by Mr. Justice Brown it is said (p. 627):

"While the laws of all civilized States recognize in a citizen the absolute right to his own earnings and the enjoyment of his own property and to the increase thereof during his life, except so far as the State may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute and within legislative control. * * * Though the general consent of the most enlightened the general consent of the most enlightened nations has, from the earliest historical period, recognized the natural right of children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good."

In *Magoun* v. *Illinois Trust and Savings Bank*, 170 U. S. 283, Mr. Justice McKenna, speaking for this Court, makes historical reference to such taxes as follows (pp. 287-8):

> "Legacy and inheritance taxes are not new in our laws. They have existed in Pennsylvania for over sixty years, and have been enacted in other States. They are not new in the laws of other countries. In *State* v. *Alston*, 94 Tenn. 674, Judge Wilkes gave a short history of them, as follows: 'Such taxes were recognized by the Roman law. 1 Gibbon, Decline and Fall of the Roman Empire, pp. 163, 164. They were adopted in England in 1780, and have been much extended since that date. Dowell, History of Taxation in England, 148; Acts 20 Geo. III, Chap. 28; 45 Geo. III, Chap. 28; 16 and 17 Vict., Chap. 51; Green *v.* Croft, 2 H. Bl. 30; Hill *v.* Atkinson, 2 Meriv. 45. Such taxes are now in force generally in the countries of Europe. Review of Reviews, February, 1893. In the United States they were enacted in Pennsylvania in 1826; Maryland, 1844; Delaware, 1869; West Virginia, 1887; and still more recently in Connecticut, New Jersey, Ohio, Maine, Massachusetts, in 1891; Tennessee in 1891, chapter 25, now repealed by chapter 174, acts 1893. They were adopted in North Carolina in 1846, but repealed in 1883. Were enacted in Virginia in 1844, repealed in 1855, re-enacted in 1863, and repealed in 1884.' Other States have also enacted them—Minnesota by constitutional provision.
>
> "The constitutionality of the taxes has been declared, and the principle upon which they are based explained (quoting various authorities).

"It is not necessary to review these cases, or state at length the reasoning by which they are supported. They are based on two principles: 1. An inheritance tax is not one on property, but one on the succession. 2. The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the States may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions, and are not precluded from this power by the provisions of the respective State constitutions requiring uniformity and equality of taxation."

This view is in harmony with the decisions in New Jersey, in the present case and others.

*Neilson* v. *Russell, supra.*
*Carr* v. *Edwards, supra.*
*Howell* v. *Edwards, supra.*

There is no difference in the basis of the tax, whether the deceased owner was resident or non-resident in the State having jurisdiction over the property, or whether the successors be resident or non-resident in the State having jurisdiction over the property. There may indeed be reasons for valid classification (as we shall later show) in the application of the tax to successions to the estates of resident and non-resident decedents, but in the consideration of the objections based on the Federal constitution presented in this record, there can be no challenge of the right of the State to control the

succession to property, within the sovereign control of the State, of the estate of a non-resident decedent as completely as property of an estate of a resident decedent.

Mr. Chief Justice Gummere, speaking for the New Jersey Court of Errors and Appeals, in *Dixon* v. *Russell*, 79 N. J. L. 490, 491, said:

> "We do not doubt the power of the State to impose a succession tax, where the succession is by reason of death, without regard to the domicile of the decedent from whom the property passes, provided that the property which is the subject of the succession is within the jurisdiction of the State."

The imposition of succession taxes does not repeal the laws relating to the devolution of property, real or personal, in the event of intestacy, or interfere with the effect of statutes of wills. The right to succeed to the property by devise or descent being a creature of law and not a natural right, the authority which confers it may impose conditions upon it; the tax is merely an imposition upon the right to take by grace of the State law. With special reference to the personal property of non-resident decedents, it was said by Mr. Justice Swayze, in *Carr* v. *Edwards*, 84 N. J. Law, 667, 669:

> "The only special right given by the New Jersey law in case of a non-resident is the right of an executor or administrator to succeed to the property having its situs in New Jersey."

The fact that the property having its situs in the State consists of stocks of New Jersey corporations neither decreases nor diminishes the special right given by the New Jersey law, and the succession to that species of property is just as legitimately the subject of succession tax as to any other species of property having its situs in the State. That shares of the capital stock of New Jersey corporations, wherever owned, have their situs in New Jersey is no longer in doubt either in the State Courts or in this Court.

*Amparo Mining Co.* v. *Fidelity Trust Co.*, 75 N. J. Eq. 555, affirming 74 N. J. Eq. 197.

*Dixon* v. *Russell*, 79 N. J. L. 490, 491 (Ct. of Errors and Appeals, in sustaining succession tax).

*Security Trust Co.* v. *Edwards*, 90 N. J. L., 558.

*Jellenik* v. *Harris, &c., Co.*, 177 U. S. 1.

*Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 401.

As further illustrating the recognition by this Court of the succession as the basis of the tax and the primary control of the States over succession, reference may be made to the opinion of Mr. Chief Justice White, in dealing with the constitutionality of the Spanish War Tax Act of 1898 in *Knowlton* v. *Moore*, 178 U. S. 41. The Court quotes at length from *Magoun* v. *Illinois Trust and Savings Bank, supra*, and emphasizes the fact that *death* is the generating

source from which the succession tax is derived, in the following language (p. 55):

> "Thus, looking over the whole field, and considering death duties in the order in which we have reviewed them—that is, in the Roman and ancient law, in that of modern France, Germany and other continental countries, in England and those of her colonies where such laws have been enacted, in the legislation of the United States and the several States of the Union—the following appears: Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes, or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested."

And, again, in discussing the right of the United States to impose such taxes (p. 57):

> "Confusion of thought may arise unless it be always remembered that, fundamentally considered, it is the power to transmit or the transmission or receipt of property by death which is the subject levied upon by all death duties. The qualification of such taxes as privileged taxes, or describing them as levied on a privilege, may also produce misconception, unless the import of these words be accurately understood. They have been used where the power of a

State government to levy a particular form of inheritance or legacy tax has in some instances been assailed because of a constitutional limitation on the taxing power. Under these circumstances the question has arisen whether, because of the power of the State to regulate the transmission of property by death, there did not therefore exist a less trammeled right to tax inheritances and legacies than obtained as to other subject matters of taxation, and upon the affirmative view being adopted, a tax upon inheritances or legacies for this reason has been spoken of as privileged taxation, or a tax on privileges. The conception, then, as to the privilege, whilst conceding fully that the occasion of the transmission or receipt of property by death is a usual subject of the taxing power, yet maintains that a wider discretion or privilege is vested in the States, because of the right to regulate. Courts which maintain this view have therefore treated death duties as disenthralled from limitations which would otherwise apply, if the privilege of regulation did not exist. The authorities which maintain this doctrine have been already referred to in the citation which we have made from Magoun *v.* Illinois Trust and Savings Bank, 170 U. S. 288.

* * *

"All Courts and all governments, however, as we have already shown, conceive that the transmission of property occasioned by death, although differing from the tax on property as such, is, nevertheless, a usual subject of taxation. Of course, in considering the power of Congress to impose death duties, we eliminate all thought of a greater privilege to do so than

exists as to any other form of taxation, as the right to regulate successions is vested in the States and not in Congress."

Whether or not the State could go so far as to absolutely appropriate property upon the death of the occupant (as affirmed by Taney, *C. J.*, in *Mager* v. *Grima, supra*) is not properly involved in the present discussion, but even the Courts which contest the authority of the State to take away altogether the inheritable quality of property do not contest the authority of the State to regulate the right of succession and to impose taxes thereon.

See *Nunnemacher* v. *State,* 129 Wis. 190, 108 N. W. 627, 9 L. R. A. (N. S.) 121, 9 Ann. Cas. 711 (Wisconsin).

*Minot* v. *Winthrop,* 162 Mass. 113, 38 N. E. 512, 26 L. R. A. 259, Thayer's Cases on Const. Law, 1422, criticised adversely in 8 Harvard Law Review, 226, and apparently at variance in theory with the earlier case of *Brettun* v. *Fox,* 100 Mass. 234.

## II.

**The clauses of the Federal Constitution and the Federal statutes relied upon by plaintiffs-in-error have no application to the succession taxes imposed by the New Jersey statutes under examination.**

The clauses of the Federal constitution and the Federal statutes relied upon by the plaintiffs-in-error are as follows:

Constitution, paragraph 1, section 2, of article IV:

> "1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Constitution, Fourteenth Amendment, as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

United States Revised Statutes, section 1977, as follows:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of the laws and proceedings for security of persons and property as is enjoyed by

white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

United States Revised Statutes, section 1978, as follows:

"All citizens of the United States shall have the same right in every State and Territory as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold and convey real and personal property."

These Federal statutes are a part of the legislation which Congress has enacted pursuant to the authority conferred by the Fourteenth Amendment to pass appropriate laws to enforce its provisions.

Of course, they cannot have wider application than the provisions of the Constitution under authority of which they were enacted, and, while properly construed, the language of these statutes does not broaden the constitutional provisions, the present discussion turns on the effect of the constitutional provisions themselves.

The appeal by the plaintiffs-in-error to the provisions of the Federal Constitution and the Federal laws passed in pursuance of authority thereby conferred, can be successfully supported, if at all, only upon the theory that (1) inheritance taxes are laid upon the supposed right or privilege inherent in its possessor of transmitting property after death, a theory untenable if no such right exists; and (2) that constitutional guaranties personal to the living possessor of property are operative from and

after his death, as though he were yet alive, notwithstanding that at the moment of death such possessor of property ceases to be a constituent of that organized government which extends such constitutional guaranties to citizens and persons within its jurisdiction.

**(a) The tax is upon the right or privilege of the successor to receive the property.**

While expressions are found in some cases referring, in the discussion of taxes of this character, to a power or privilege of transmission of property after death such expressions are seldom disassociated from context reference to the receipt of the property by the successor, or to the right of succession. There is universal recognition of the doctrine summarized by the present Chief Justice in *Knowlton* v. *Moore,* 178 U. S., 41, that tax laws of this character, whatever their accidental names, such as probate duties, stamp duties, taxes on the transaction or the act of passing of an estate or a succession, legacy taxes, estate taxes or privilege taxes, in all countries rest in their essence upon the principle that *death is the generating source* from which the taxing power takes its being, and that it is the power to transmit or the transmission from the dead to the living on which such taxes are more immediately rested.

Mr. Justice McKenna, in *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S., 283, cites many cases declaring the constitutionality of such laws and explaining the principles on which they are based and states the conclusion,

as the result of his examination, that an inheritance tax is not on property, but on the succession.

Many courts emphasize the right to succeed or the act of succession as the subject of the tax.

> "The tax is not imposed upon the right to give, but upon the right to take, property." *State* v. *Cline*, 91 Kan. 416, 137 Pac. 932, 50 L. R. A. (N. S.) 991.
>
> "• • • the succession • • • is the subject matter of the tax • • • or, in other words, it is the right to become the successor • • • upon the death of the predecessor • • •." *Scholey* v. *Rew*, 23 Wall, 331.
>
> " • • • on the privilege of succeeding to the inheritance or of becoming a beneficiary under the will." *Washington County Hosp.* v. *Mealey's Estate*, 121 Md. 274, 88 Atl. 136, 48 L. R. A. (N. S.) 373, Ann. Cas. 1915 B, 1050.
>
> "• • • a charge upon the right or privilege of receiving it, and when the right to receive the property is considered it is apparent that it is something distinct and separate from the property itself, and it is this right to receive property by descent or devise that the State taxes." *Northern Trust Co.* v. *Buck & Rayner*, 263 Ill. 222, 104 N. E. 1114, affirming 183 Ill. App. 170.
>
> " • • • not on the right to give or grant, but upon the right to receive." *Lacy* v. *State Treasurer* (Ia.) 121 N. W. 179, 182.
>
> "• • • upon the right to receive the property from the estate of the decedent • • •." *State* v. *Vinsonhaler*, 74 Neb. 675, 105 N. W. 472.
>
> "• • • upon the privilege of acquiring property by inheritance." *Wallace* v.

*Myers*, 38 Fed. 184, 4 L. R. A. 171 (approved by Mr. Justice Brown in *U. S.* v. *Perkins*, 163 U. S. 625, 629).

"The tax * * * is, once for all, an excise or duty upon the right or privilege of taking property, by will or descent, under the law of the State." *State* v. *Hamlin*, 86 Me. 495, 30 Atl. 76, 25 L. R. A. 632, 41 Am. St. 569.

"It is not a tax upon the right of alienation, but on the privilege of receiving by inheritance or will, or otherwise, at the death of a former owner." *State* v. *Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178.

And see note in 33 L. R. A. (N. S.) 606, to *re McKennan* (So. Dak.), 126 N. W., 611, 130 N. W., 33.

*Re Macky*, 46 Colo., 79, 102 Pac., 1075, 23 L. R. A. (N. S.), 1207.

*State* v. *Furnell*, 20 Mont., 299, 51 Pac., 267, 39 L. R. A., 170.

It is submitted that the weight of authority, Federal and State, is that the tax (which, by the New Jersey statute is "upon the transfer * * * by will or the intestate laws * * * to persons or corporations") is upon the right or privilege of the successor to receive the property.

In this view the claim of discrimination advanced by plaintiffs-in-error, completely disappears.

***There is nothing in the inheritance tax laws of New Jersey treating otherwise than with absolute uniformity successors to property, and without regard to residence or non-residence.***

*If all of the successors to the New Jersey property of James McDonald had been citizens and residents of New Jersey, the succession tax upon his New Jersey estate would have been exactly the same as that in fact levied, all successors being non-residents.*

*If both executors of his will had been citizens and residents of New Jersey, the tax would have been no different.*

*So also as to the successors and administrator of the property of James J. Hill.*

**(b) In any view, the tax does not operate until after death, and the privileges and immunities of "citizenship" automatically end with death.**

There is nothing in the inheritance tax laws of New Jersey interfering in any way with the privileges or immunities of any citizen of any State or of the United States in his lifetime. He is as free to inherit, purchase, lease, sell, hold and convey real and personal property in New Jersey or elsewhere, as free to enjoy his property in New Jersey or elsewhere, and as fully entitled to the equal protection of the laws of New Jersey as to his property within New Jersey or elsewhere, as though the New Jersey inheritance tax act had never been passed.

This legislation has been held not inimical to the State Constitution of New Jersey and that question cannot be reopened here.

*The appeal to the Federal Constitution and laws to avoid the legislation is founded in citizenship, in the Maxwell case on citizenship of the United States and in the Hill case on citizen-*

*ship of the State of Minnesota. Both citizenships expired before the New Jersey property of either decedent became subject to the New Jersey succession taxes.*

The right of the State to control absolutely the succession to property within its jurisdiction is conceded. The right to impose conditions of taxation upon the transmission to successors is conceded.

Discrimination between such successors as citizens must not be such as to transgress the prohibitions of the Federal Constitution, but the Federal Constitution contains no provision which secures to any one, citizen of any State or of the United States, resident or non-resident in any State, the right to control or dispose of his property after death, or the right to any one whether kindred or not to take it by inheritance.

Provisions conferring rights to transmit property by will or intestacy are sometimes found in treaties, but even in these the equality of rights is assured to the living successors.

For example the treaty of 1800 between the United States and France, Article VII., provides that the citizens and inhabitants of the United States shall be at liberty to dispose by testament, donation or otherwise of their goods, moveable and immoveable, holden in the territory of the French Republic in Europe, and the citizens of the French Republic shall have the same liberty with regard to goods, moveable and immoveable, holden in the United States, in favor of such persons as they shall think

proper; the citizens and inhabitants of either of the two countries who shall be the heirs of goods, moveable or immoveable, in the other, shall be able to succeed *ab intestato*, without being obliged to obtain letters of naturalization; and the said heirs, whether such by particular title, or *ab intestato*, shall be exempt from any duty whatever in both countries.

More usual clauses in treaties provide that citizens or subjects of the contracting countries "shall have power to dispose of property" (sometimes personal only, sometimes both personal and real, and sometimes as to real property with limited period of disposal to alien successors) within the states of the other "by testament, donation or otherwise" or "by testament or *ab intestato*" and that "the heirs, legatees and donees" or "their representatives" may "succeed to the property paying such duties only as the inhabitants of the country where said property lies shall be liable to pay in like cases."

Treaty with Brazil, 1828, Article XI.

Treaty with Chili, 1832, Article IX.

Treaty with Guatemala, 1849, Article XII.

Treaty with Venezuela, 1860, Article V.

Treaty with Italy, 1871, Article XXII.

Treaty with Russia, 1832, Article X.

Treaty with German Empire, 1871, Article X.

Treaty with Wurtemburg, 1844, Article III (considered by this Court in Frederickson *v.* Louisiana, 64 U. S., 445).

Treaty with Denmark, 1826, Article VII (referred to in Petersen *v.* Iowa, 245 U. S., 170).

Treaty with Sweden, 1827, Article VI (referred to in Duus *v.* Brown, 245 U. S., 176).

The New Jersey inheritance tax laws do not prevent the disposition of property in New Jersey, personal or real, by testament or *ab intestato,* in favor of such persons as the living owner may think proper or as the law may appoint, and do not contravene any of these treaties, inasmuch as the successors are in no way differentiated in the imposition of the succession taxes.

***But the constitution of the United States contains no such provisions, and the states are left entirely free, so far as that instrument is concerned, to impose such conditions as they may see fit upon the right to succeed to property after death.***

**(c) The dead are not "citizens" within Article IV, Section 2, of, or the Fourteenth Amendment to, the Federal Constitution.**

Citizenship has a beginning and ending. It may begin, as to United States citizenship, with birth or naturalization, and may end with death or expatriation. It may begin, as to State citizenship, with birth or naturalization, or (if already a citizen of the United States or of another State) with residence *animo manendi,* and may

end with death or expatriation, or removal from the State *animo manendi.*

"Citizenship" and "residence" are not, of course, synonymous terms.

*Robertson* v. *Cease,* 97 U. S., 646, 648.
*La Tourette* v. *McMaster,* U. S. Sup. Ct., Oct. T. 1918.

And State citizenship and United States citizenship are distinct from each other and dependent upon different characteristics or circumstances in the individual.

*Slaughter House Cases,* 83 U. S., 36, 74.

The decedent McDonald, a citizen and resident of the District of Columbia, was not in his lifetime a citizen of a State, and was not, therefore, embraced within the language of Article IV, Section 2, of the Federal constitution.

*Hepburn* v. *Ellzey,* 2 Cranch, 455.

He was, however, a citizen of the United States within the language of the first sentence of the Fourteenth Amendment.

The decedent Hill was both a citizen of the State of Minnesota and of the United States.

No privileges and immunities are secured by either Article IV, Section 2, or by the second sentence of the Fourteenth Amendment except those which belong to citizenship.

*Conner* v. *Elliot,* 18 How. 591.
*Slaughter House Cases, supra.*
*Blake* v. *McClung,* 172 U. S., 239.

Only natural persons are included.

*Paul* v. *Virginia,* 8 Wall, 168, 180.

The word "citizen" has no wider meaning in the Fourteenth Amendment than in Article IV, Section 2.

*Slaughter House Cases, supra.*

*U. S.* v. *Wong Kim Ark,* 169 U. S., 649, 687.

*Baldwin* v. *Franks,* 120 U. S., 678, 690.

*Blake* v. *McClung,* 172 U. S., 239.

"The Fourteenth Amendment did not radically change the whole theory of the relations of the State and Federal Governments to each other and both Governments to the people. The same person may be at the same time a citizen of the United States and a citizen of a State. Protection to life, liberty and property rests primarily with the States, and the Amendment furnishes additional guaranty against any encroachment upon these fundamental rights which belong to citizenship, and which the State Governments were created to secure. The privileges and immunities of citizens of the United States as distinguished from the privileges and immunities of the citizens of the States are indeed protected by it, *but these are privileges and immunities arising out of the nature and essential character of the National Government, and granted or secured by the Constitution of the United States.*"

*Re Kemmler,* 136 U. S. 436, 448 (FULLER, *C. J.*).

*No privileges of succession or right of succession to property, real or personal, arise out of the nature and essential character of the National Government, or inhere in United States citizenship as such. Hence such privileges have*

*no additional guaranty by reason of the Fourteenth Amendment.*

*Slaughter House Cases, supra.*

All the privileges and immunities of "citizenship," either of a State or of the United States, automatically cease with the determination of the citizenship by expatriation.

So also if the citizenship ends by death.

**(d) The dead are not "persons" within the concluding clause of the Fourteenth Amendment.**

The word "person" does not include in legal definition the dead.

> "Persons are divided by law into natural and artificial. Natural persons are such as the God of nature formed us; artificial are such as are created or defined by human laws for the purposes of society and the government, which are called 'corporations' or 'bodies politic.'" I Bl. Com. 123.
>
> "Person—Any human being, corporation or body politic having legal rights and duties." *Standard Dictionary* (law definition).
>
> "Person—9. In law (a) a living human being, (b) a human being having rights and duties before the law, one not a slave. In old Roman law slaves were not considered to be persons. (c) A being, whether natural or artificial; whether an individual or a body corporate, having rights and duties before the law." *Century Dictionary.*
>
> "In jurisprudence a person is the object of rights and duties, *i. e.*, capable of having rights and of being liable to duties, while a thing is the subject of rights and duties * * *. Persons are of two kinds,

natural and artificial. A natural person is a human being." *Rapalye's Law Dictionary.*

The word as used in the Fourteenth Amendment includes natural persons, and, for some purposes, artificial persons.

*Covington & L. Turnpike Co.* v. *Sandford,* 164 U. S., 578.

*Smyth* v. *Ames,* 169 U. S., 466.

*Northwestern Nat'l Life Ins. Co.* v. *Riggs,* 203 U. S., 243.

"Due process" and "equal protection" require legal personality, natural or artificial, having inherent capacity of prosecuting or defending. Abatement of actions at common law by death of the party litigant is illustrative; revival statutes are for the benefit of the successors recognized by law, and are not a recognition of any legal personality in the dead.

"It is axiomatic that a corpse is not a person." RUGG, *C. J.*, in *Brooks* v. *Boston & N. Street Rwy. Co.,* 211 Mass. 277, 97 N. E. 760.

See also *State* v. *Frear,* 144 Wis., 79; 128 N. W., 1068; 140 Am. St., 992.

**(e) The artificial entity unknown to the law styled by plaintiffs in error "Estate of James McDonald, nonresident decedent," or "Estate of James J. Hill, nonresident decedent," is not a citizen or person within Article IV, Section 2, or the Fourteenth Amendment of the Federal Constitution.**

Plaintiffs in error, however, do not content themselves with the attempt to have the Consti-

tution of the United States prolong the citizenship of James McDonald or of James J. Hill beyond the span of his natural life. They have set up an artificial entity unknown to the law, styled "Estate of James McDonald, non-resident decedent,"—"Estate of James J. Hill,"—and would extend the citizenship guaranty to this artificial entity.

In the first place it is clear that "Estate" is a figure of speech to describe the *property* of which the decedent died possessed in its entirety, and when visualized by the imagination does not disclose any other quality than such as appertains to property. *We are discussing the privileges and immunities of "citizens," not of "property."*

In the next place even if we conceive this "Estate" to be an artificial person, *comparable to a corporation,* whether comprising the living successors to the property of the decedent, like unto the living members of a corporation, or comprising a mass of material wealth with living owners other than the decedent, the constitutional guaranties assured to a citizen are not to be accorded thereto.

Corporations are not *citizens* within these sections of the Constitution.

*Paul* v. *Virginia, supra* (8 Wall., 168, 177).

*Pembina Consol. Silver Mining Co.* v. *Penna.,* 125 U. S., 181.

*Norfolk &c. R. Co.* v. *Penna.,* 136 U. S., 114.

A corporation does not have the rights of its personal members and cannot invoke the provisions of these sections.

*Waters-Pierce Oil Co.* v. *Texas,* 177 U. S., 28.

*How much more must a claim of right to invoke the provisions of these sections be denied to an artificial entity, not only without a soul but minus even a legislative body.*

The "Estate" being dismissed from the mind, and the successors to the property of the non-resident decedent, whose right of succession is the subject of the tax, being called forward, we find no possibility of complaint, as there is no discrimination as between such takers, whatever their citizenship.

The act of 1909 and its amendments makes no discrimination of any kind based on diverse citizenship of successors to any property, real or personal, of non-resident decedents. Such successors are treated with absolute uniformity, and without regard to residence or non-residence.

**(f) The New Jersey transfer tax laws applicable either to transmission of property by will or intestacy are not in any way controlled by citizenship, in their application to successions to the estates of citizens either of the State or of the United States, resident or non-resident. Taxes are imposed upon the succession to the property of all resident and non-resident decedents.**

It will be noted by reference to the title of the act that it applies to the transfer of prop-

erty of *resident* and *non-resident* decedents, and that in defining the conditions under which the tax was to be imposed, set forth as First, Second, Third and Fourth, the first refers to *transfer by will or by the intestate laws of the State* from any person dying seized or possessed of property *while a resident of the State;* the second when the transfer is *by will or intestate law of property within the State* and the decedent was a *non-resident of the State* at the time of his death; the third relates to *the transfer of property made by a resident or a non-resident, when such non-resident's property is within the State,* in the lifetime of such resident or non-resident but intended to take effect, in possession or enjoyment, after death; the fourth refers to the coming into the enjoyment of estates in expectancy by *transfer from a resident or non-resident decedent when such non-resident decedent's property is within the State.*

The act, therefore, in title and definition emphasizes the distinction between the property of resident and non-resident decedents as well as the intention to tax transferees of the property of both.

*As to the property of resident decedents the act by its language reaches every transfer, by will or by the intestate laws of the State, from any person dying seized or possessed of the property while resident.*

*As to the property of non-resident decedents the act by its language reaches every transfer, by will or intestate law (of any state or country), of certain forms of property within the*

*State at the time of the death of such non-resident decedent.*

As heretofore stated there is no distinction found in the law as between the successors as a class to the property of either resident or non-resident decedents. Absolute uniformity prevails as between such successors, whether resident or non-resident, citizen of the State or of the United States, native or foreign born, naturalized or alien.

Neither is any discrimination found in the act traceable to the citizenship of the decedent. *The application of the law to the estates of decedents is not differentiated by citizenship but by residence.* For reasons, obvious in the face of the act and in this brief later more particularly referred to, different methods of application of the transfer taxes are appropriate as to transfer taxes on the succession to property of resident decedents and of non-resident decedents.

*The State undertakes to make no different application of its transfer tax laws to property within its jurisdiction because of the citizenship of its decedent owner.*

In the late case of *LaTourette* v. *McMaster*, October term, 1918, this Court sustained the law of the State of South Carolina permitting to be licensed as insurance brokers in that State only such persons as are residents in the State and have been licensed insurance agents of the State for at least two years. LaTourette, a resident and citizen of New York, desiring to

act as an insurance broker in South Carolina and being denied license because of his non-residence, challenged the law as in violation of Section 2 of the Constitution of the United States, in that he, a citizen of New York, was denied the privileges and immunities granted to citizens of the State of South Carolina and deprived of liberty and property without due process of law.

This Court held that because the business of insurance was clothed with a public interest it was subject to the regulating power of the State and that those engaged in it are affected by the same interest and subject to regulation as is the business itself. Following earlier decisions of this Court it was held that the Court had no need to know the reason for the legislative judgment or to be convinced of the wisdom of the exercise of the power; it was enough that the legislation was passed in the exercise of a power of the government and had relation to that power.

In rejecting the contention of counsel for LaTourette, that the act deprived him of the enjoyment of rights granted by the State to its own citizens, in violation of the provisions of the Federal Constitution above referred to, the Court approved the distinction made by the Supreme Court of the State *between citizens and residents,* and held that it was the effect of the statute that its requirement applied as well to citizens of the State of South Carolina as to citizens of other states, residence and citizenship being different things.

It has heretofore been made plain under the authority of many decisions of this Court that nothing in the Federal Constitution interferes with the right of the State to regulate successions to property or to impose conditions upon such succession. Even the case of *Knowlton* v. *Moore*, already referred to, which upheld the imposition by the Federal government of Federal succession taxes, in no way questioned the authority of the states to regulate successions.

Remembering the distinction between citizens and residents and applying that distinction to the New Jersey transfer tax act it is apparent that it is the effect of the statute that its requirement applies as well to citizens of the State of New Jersey as to citizens of other states.

This is so whether the attention be directed to the decedent or to his successors.

The title of the act refers to the transfer of property of resident and non-resident decedents.

The estate of a citizen of New Jersey, non-resident in New Jersey at the time of death, is the estate of a non-resident decedent. The estate of a citizen of the United States, or of a citizen of another state, or of an alien, resident in New Jersey at the time of death, is the estate of a resident decedent.

The successors to the estate of a resident decedent whether citizens or residents of another state, or of New Jersey, or of a foreign country, are treated as between each other without

discrimination. The successors to the property within New Jersey of the estate of a non-resident decedent, whether such successors are citizens or residents of other states, or of the United States, or of a foreign country, are treated as between each other without discrimination.

Any differences, if any there be, in the application of the law, whether considered from the standpoint of the decedent owner or from the standpoint of the successors, are distinctions based on residence and not on citizenship, and the subject matter to which the distinctions apply being within the regulatory power of the State over successions to property within its jurisdiction, the provisions of the Federal Constitution relative to the rights and immunities of citizenship are without application.

## III.

**There is no actual discrimination in the application of the New Jersey Transfer Tax as applied to successions to the estates of resident and non-resident decedents. On the contrary there is equality and uniformity.**

It is not contended by the State that the State has any right whatsoever to tax the transfer of property of non-resident decedents not within the jurisdiction of the State, and the ratio method does not, as is contended by the plaintiffs in error, in theory or in fact so result.

It is admitted by the brief of plaintiffs in error (page 30) that, for the purpose of ascertaining the property within the State subject to the tax, the legislature may take into consideration property of non-resident decedents within and without the State. The ratio method uses the amount of the total property of the non-resident decedent ascertained to be within the jurisdiction of the State, and that part only, for the purpose of finally determining the tax to be imposed by the State upon that part.

It is erroneously contended by plaintiffs in error, that section 12, in the form in which it was first adopted in P. L. 1909, page 236, operated unequally, even in the application of the transfer tax upon collaterals only at the flat rate then imposed by the law, but the principal charge of discrimination arises out of the inequality alleged to result from the introduction, by the amendment of 1914, of a progressive tax, the elimination from the law of the exempted class of beneficiaries nearly related to the decedent and an imposition of a different rate of tax upon different classes.

It is conceded by plaintiffs in error that the State may in imposing a transfer tax consider the relation which the person or corporation given the right of succession sustains to the deceased, to the property, or to the State, and may regulate the amount of the tax to be required in view of such relation, and in exercising this power may fix the amount of the tax by reference to the value of the property passing, and may in its discretion exempt classes

of persons or property from the imposition of the tax, all of these propositions being expressly recognized by decisions of this Court, particularly *Magoun* v. *Illinois Trust & Savings Bank, supra,* and *Plummer* v. *Coler,* 178 U. S., 115.

We have, therefore, the concession of the plaintiffs in error and the authority of this Court for these propositions:

1. *That the legislature in imposing inheritance taxes may discriminate as to the rate of taxation between those near to the decedent and those far removed and strangers.*

2. *That the legislature may, in its discretion, exempt any class from the imposition of the tax entirely, or may exempt definite amounts.*

3. *That the legislature may impose a progressive rate, increasing with the amount of property passing.*

4. *That the legislature may subject to transfer tax property of non-resident decedents within the jurisdiction of the State, and for the purpose of ascertaining the property within the State subject to the tax—and necessarily, therefore, for ascertaining the amount of the tax—may bring into consideration property of non-resident decedents within and without the State.*

The Act of 1909, both before and after amendment, altogether excluded from the tax imposed by the act transfers of any property, real or

personal, of resident or non-resident decedents of less than $500.

The Act of 1909 originally exempted property passing to a father, mother, husband, wife, child or children, or lineal descendant, brother or sister, or wife or widow of a son, or husband of a daughter.

The second amendment of 1914 withdraws these exemptions if the property passing to anyone of the enumerated distributees or beneficiaries amounts to $5,000 or more, and subjects the property so passing to a progressive rate beginning as to child, husband or wife of the decedent, or issue of child of the decedent, at one per cent. on any amount in excess of $5,000, and as to father, mother, brother or sister, wife or widow of a son, or husband of a daughter, at two per cent. on any amount in excess of $5,000 and progressing as prescribed by the statute to a maximum rate of three per cent. as to child, husband or wife of the decedent, or issue of child of the decedent, and to a maximum rate of four per cent. as to father, mother, brother or sister, or wife or widow of son, or husband of daughter.

The act originally taxed all other transfers, by will or intestate laws, of property of resident decedents and all property within the State of non-resident decedents, at the uniform rate of five per centum on clear market value, ascertained, in the case of transfers of property of resident decedents, by direct application of the rate to the value of the property, and, in the case of transfers of property within this

State of non-resident decedents, by the ratio method set forth in section 12.

It must be conceded and it has been adjudicated by the State courts that by the direct application of the rate to the value of the property as to transfers from resident decedents, and by the ratio method as to transfers of property within the State of non-resident decedents, there was an equal distribution of the burden of the tax imposed upon the succession to the property of resident decedents and non-resident decedents similarly situated as to the amount and distribution of property. True it was remarked by Mr. Justice Swayze in *Carr* v. *Edwards, supra,* that the tax upon the succession to the New Jersey property of a non-resident decedent was not necessarily exactly five per cent. upon the whole New Jersey succession, as the amount depended upon the ratio of the New Jersey property to the entire estate wherever situate. This, however, merely afforded a measure of the tax imposed and equalized the rate as between the estates of resident and non-resident decedents.

The amendment of 1914 did not change the rate of five per centum on the clear market value applicable under the original act to other transfers than those originally exempted.

Remembering that, notwithstanding the frame of the Act of 1909, it was entirely competent for the legislature to eliminate the exemptions and to apply different rates as between near and distant relatives and strangers, and to impose a graduated tax increasing with the amount

of property passing, it is not conceived that the scheme of the Act of 1909, unobjectionable and sustainable *in toto*, both as to the transfer of the property of resident decedents and the property within New Jersey of non-resident decedents, is changed by the amendment of 1914 in theory or motive except within the limits of recognized rules applicable to succession taxes.

*None of the changes made by the amendment of 1914 is of itself in contravention of admitted authority on the part of the State, and for any one of these changes, taken singly, abundant judicial support can be produced.*

How can the inclusion of these lawful impositions in one act be deemed to be discriminatory?

The history of this ratio provision absolutely prevents any possibility of claim that its adoption was intended to be discriminatory as against successors to estates of non-resident decedents.

It appears from the opinion of the New Jersey Supreme Court in *Tilford* v. *Dickinson*, 79 N. J. L., 302, page 303, that the ratio method of assessing for transfer tax estates of non-resident decedents was used prior to its enactment into law by the Act of 1909. Although there has been much litigation over the New Jersey inheritance tax statutes the ratio method of assessment, as applied to estates of non-resident decedents, does not seem to have been challenged in any case of intestacy. The *Tilford* case disputed an assessment under the

ratio method against the estate of a testator who died domiciled in the State of New York leaving personal property both in New York and New Jersey, and leaving bequests to persons who were exempt and persons who were taxable under the New Jersey statute.

The executor attempted to relieve the property in New Jersey from taxation by applying it to the payment of exempt legacies and by paying the taxable legacies out of New York property. This attempt was overruled in an opinion by Mr. Justice Reed.

The ratio statute of 1909 had not been passed at the date of the death of the decedent Tilford, although it had been passed prior to the rendering of the opinion. The assessment, though made under the ratio method prior to the enactment of the ratio statute of 1909, was sustained by the Court. The opinion discusses the variant holdings of the courts of last resort of New York and Massachusetts, the former having recognized a distinction between cases of testacy and intestacy while the latter had treated both alike.

After reference to the adoption of the ratio statute of 1909 since the death of the decedent Mr. Justice Reed said (p. 307):

> "Speaking of intestate estates, I am inclined to think that apart from the statute, the logical rule to be adopted where property is situated as in this class, is the rule provided for by our statute. The theory upon which it rests is that each distributee has an undivided interest in all the assets of an estate, and that no particular portion

of such assets passes to any particular distributee. Therefore, when it is ascertained what portion of the whole estate goes to all of the collateral distributees as a class, it will be presumed that such proportion of the New Jersey property goes to such class of collaterals as the property in New Jersey bears to the property in New York—it being assumed that equal proportions of the property in both states will be devoted to the payment of collateral distributees. This rule was so applied in the present assessment."

* * *

"It may be admitted that under a will, specific property in this state may pass to a legatee in the exempted class, and so pass as to evade taxation in this state; but these instances are confined to legacies specifically transferred directly to the beneficiary by force of the terms of the will.

"Apart from strictly specific legacies, I am unable to perceive any substantial ground for differing the administration of an estate by an administrator from the administration of an estate by an executor, in respect to the question now presented. Technically, of course, by will the estate goes to the executor; but it goes to him as trustee for all who are designated beneficiaries in the will which he is appointed to execute. Equity will compel him to administer the estate for the benefit of the legatees and devisees. His required assent to the payment of the legacies may be compelled in equity. 2 Wms. Ex., 1238.

"Indeed, his required assent is without substance, because by the statute of many states, including New York and New Jersey, the executor is compelled to pay the legacies within a stipulated period. 2 Woerner Am. L. of Admin., 997.

"The legatee, before the assent of the executor, had such an inchoate title as passed to his personal representative in case of his decease. Redf. Wills, part 2, p. 565.

"Indeed, the scheme of administration in both testate and intestate estates is designed to secure, in the first instance, the payment of the debts of the decedent, and then to secure to the beneficiaries the remainder of the estate, whether such beneficiaries are designated in the will or by the statute of distribution in cases of intestacy. When the designated beneficiaries are, as in this case, general and not specific legatees, no legatee takes any specific assets of the testator's estate. He does not take an interest in the entire estate, to be ascertained upon administration after the application of the estate to the payment of debts, by the distribution of the remaining estate according to the terms of the will.

"The bequest to testator's sister for life, and to a brother for life, and of the residuum to another brother, did not pass to either any particular assets, and so did not pass *in specie* the New Jersey property.

"Nor did the authority conferred by the will upon the executor to distribute securities at their cash value to the legatees, in my judgment, modify this conclusion. No particular portion of the estate was by the testator devoted to any particular legatee. The interest which passed on the death of the testator was only to have some property delivered, or money paid, in the course of administration.

"The conclusion at which I have arrived is that the appraisement and assessment brought up by this writ should be affirmed."

The Court of Errors and Appeals reversed the Supreme Court in *Tilford* v. *Dickinson,* 81 N. J. L., 576, on the authority of *Dixon* v. *Russell,* 79 N. J. L., 490, because of defect in title of the law, expressing no opinion as to the views of Judge Reed, saying however "Decedent having died on March 9, 1909, the acts of April 20th, 1909, (Pamph. L., pp. 304, 325), have no applicancy."

The ratio provision was later completely supported by the Court of Errors and Appeals in *Carr* v. *Edwards,* 84 N. J. L., 667, in which it was held that the legislature meant by the Act of 1909 to reach all transfers from a decedent to his successors whether they succeeded to the whole estate as a universal succession, or to the estate in New Jersey as a universal succession of the New Jersey executor or administrator, or the single succession of a devisee or legatee. Mr. Justice Swayze said:

> "We had in *Neilson* v. *Russell,* 47 Vr., 655, just prior to the passage of the act of 1909, held that a legacy under a non-resident's will was not taxable here because, among other reasons, it depended for its validity and amount upon the law of the testator's domicile. We said that the justification of special taxes of this character imposed without regard to the limitation contained in our constitution upon property taxes, was found in the fact that the rights of testamentary disposition and of succession were creatures of law upon the exercise and operation of which the lawmaker might impose terms, and that it followed logically that the only law that could impose the terms

was the law that created the right. The only special right given by the New Jersey law in case of a non-resident decedent is the right of an executor or administrator to succeed to the property having its situs in New Jersey. Unless, therefore, the legislature meant by the act of 1909 to tax this right—the transfer by grace of our law of the property having its situs here from the decedent to his representative—its enactment was futile as far as the estates of non-residents are concerned. We cannot attribute such futility to a legislative act. The intent apparent on its face was to overcome the effect of our decision in *Neilson* v. *Russell*, which we must assume, as the fact undoubtedly was, the legislature had in mind. If the statutory definitions of 'estate' and 'property' in section 26, conflict with this construction, they are not applicable. Section 26 expressly excepts from the statutory definition those parts of the act where the subject or context is repugnant to the definitions. The exception proves that the legislature did not mean the definition to be of universal application throughout the statute. The subsequent reference in the same section to the meaning of the word 'transfer' does not limit the meaning we have attributed to that word in the first section. On this subject section 26 enacts only that the word 'transfer' shall be taken to include the passing of property by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift, but there is nothing to indicate that this was meant to be an exhaustive definition, or that it was intended to exclude the more ordinary and usual signification of the word.

"No greater difficulty is presented by section 12. That section contains nothing to

indicate that it is not the succession of the New Jersey representative that is meant to be taxed. It is true that the tax is not necessarily five per cent. upon the whole New Jersey succession. The amount depends on the ratio of the New Jersey property to the entire estate wherever situated. This, however, merely affords a measure of the tax imposed; the tax is still by the very words of the section imposed upon the property located within this state. The reason for adopting this provision was to make sure that the rate of taxation in case of non-resident decedents should equal but not exceed the rate imposed in the case of resident decedents. By section 1 property passing to certain classes of legatees or devisees was exempt. The act in this section makes a distinction between the 'transfer' and the 'passing of property.' Transfer as far as concerns personal property connotes the immediate fiduciary succession of the executor or administrator; the passing of property connotes the ultimate beneficial succession of the legatee or devisee. So, in section 12 a distinction is made between the transfer of property in this state, and the passing of the estate wherever situate. The object and effect of section 12 was to equalize the rate of the transfer tax as between the estate of resident and non-resident decedents. This determination of the rate of taxation by the ultimate beneficial succession to the property did not, however, change the nature of the tax from a transfer tax to a legacy duty. Nor does the fact that by section 7 the administrator, executor or trustee is authorized to deduct the tax, change its character. Section 7 does not merely anthorize the deduction of the tax from the legacy or its collection from the legatee.

The legislature was careful to add authority to deduct the tax not only from a legacy but also from 'property for distribution,' and to collect it not only from the legatee but from 'persons entitled to such property.' The authority to deduct from a legacy or to collect from a legatee could refer only to estates of resident decedents, for it is only in the case of such estates that the amount of validity of the legacy can be determined by New Jersey law. *Neilson* v. *Russell, supra.* In the case of the estates of non-resident decedents, it is open for the law of the domicile to provide, as testators sometimes do, that such taxes shall be a general charge against the estate. Our legislature must be assumed to have had in mind its lack of jurisdiction over legacies under a non-resident's will, and in order to protect the New Jersey executor, administrator or trustee who paid the tax, authorized its deduction from 'property for distribution.' This phase suffices to reach not only a distributive share of a resident's estate in case of intestacy, but the whole of the New Jersey property of a non-resident when turned over to the executor or administrator at the domicile of the decedent. The provisions for both cases—legacies and property for distribution—demonstrates that the legislature did not mean to provide, as counsel contends, for a legacy duty only."

The general scheme of the Act of 1909, as originally passed, in its application to the property of non-residents was sustained by the New Jersey Supreme Court in *Beers* v. *Edwards,* 84 N. J. L., 32.

Section 12, as originally enacted and considered in *Beers* v. *Edwards,* did not specifically in-

clude in the final paragraph real property located out of the State as a part of the entire estate of a non-resident decedent, and by construction in *Beers* v. *Edwards* real property so situated was omitted. In that opinion, however, Mr. Justice Swayze said:

> "We do not mean to say that the legislature might not have adopted another basis for the computation of the entire tax; it might perhaps have enacted that the entire tax should be the amount to which the estate would have been subject if the decedent had been a resident of New Jersey, and all his property had been situated here."

By the amendment of 1914 the final clause of section 12 has been changed so as to comply with Mr. Justice Swayze's suggestion, and the one term of the proportion of the ratio method is now the entire tax to which the said estate would have been subjected under this act if such non-resident decedent had been a resident of the State and all his property, real and personal, had been located within the State, and the other term is now all the taxable property of the non-resident decedent within the State. The legislature at the same time defined the term referable to property located within the State "as such taxable property within this State," because, by this same amendment of 1914, the second paragraph of the first section of the Act of 1909 as amended by first amendment of 1914, was amended so as to relieve from taxation a part of the property within the State of non-resident decedents, by the omission of all intangibles of non-resident de-

cedents, such as deposits in banks in the State, mortgages on real estate in the State, notes and bonds actually within the State and open debts owing to the non-resident decedent by citizens of the State, and leaving the particular kinds of property of non-resident decedents mentioned in the law subject to transfer tax, namely, real property within the State, goods, wares and merchandise within the State, and shares of stock of corporations of the State or of national banking associations located in the State.

The ratio provision of the New Jersey transfer tax act was first made law in an act of April 7, 1909 (P. L. 1909, 236), taking effect immediately, and was at once incorporated into the general revision of 1909 (P. L. 1909, 325; Comp. Stat., 5307), approved April 20, 1909, but not taking effect until April 4, 1909.

As hereinbefore stated the ratio method had been used in imposing succession taxes under the earlier laws.

It is apparent that as between transfers of the property of a resident decedent and transfers of property within the State of a non-resident decedent, if neither the resident decedent nor the non-resident decedent die seized of real estate located without the State, the ratio method of ascertaining the amount of the tax on the transfer of the property in the State of the non-resident decedent can work no discriminating inequality. The theory upon which it rests is that each distributee has an undivided interest in all of the assets of the

estate and that no particular portion of the said assets passes to any particular distributee. The same theory underlies the payment of debts by the executor, the application of exemptions to succession taxes, and the payment of legacies other than specific, whether general or residuary, and it necessarily involves, in the application of the progressive rates, the prorating of the amounts to which the progressive rate applies as between taxable property within the jurisdiction and the entire estate. The effect of the prorating, in the proportion of the New Jersey property to the entire estate, of the amounts of the entire estate to which the progressive rate would apply, if the entire estate were in New Jersey and of a resident decedent, is the discrimination alleged by the plaintiffs in error. The legislature could not, without such prorating of the progressive rate, maintain equality in burden in the application of the progressive rate as between estates of resident and non-resident decedents. *An abandonment of such prorating would grossly favor the estate of non-resident decedents.*

In the application of the ratio system in cases of intestacy there is no room for criticism as there can be no differences in the assessment of the tax against the succession to the property within this State except such differences as may arise by reason of the nearer or more distant relationship of the successor to the deceased or the amount of the estate passing, all such differences, of course, being uniformly applicable under like conditions.

As illustrating the absolute mathematical exactness of the working of the ratio method we may exhibit its effect in detail upon the estate of James J. Hill involved in the present case, treating his estate in the first instance as that of a resident decedent with all its property in New Jersey, and, then, as the estate of a non-resident decedent having within New Jersey taxable property of the amount ascertained by the State Comptroller out of the total wealth situated in the State and elsewhere, prorating not in bulk, but in detail, the exemptions and application of the progression. The transfer tax on the New Jersey property worked out in detail tallies with the proportion of the whole required by the statute, the slight variation from the Comptroller's figures being due to the decimal. (See table on opposite page.)

In the rule adopted in New Jersey, that the ratio principle should be applied in cases of testacy, there is no difference in circumstances of the application of the succession tax in cases of testacy except such as are due to the provisions of the will, the successor finding himself subject to such burden as his nearness or remoteness of relationship to the testator or the amount of the bounty extended to him impose. *All wills are not alike and great variety of succession necessarily results, but where the conditions are alike the successors receive equality of treatment.*

The plaintiffs in error are, of course, driven in their efforts to demonstrate inequality of application to illustrations showing an apparently

## CALCULATION OF TAX ON HILL ESTATE AS OF A NEW JERSEY RESIDENT DECEDENT.

| | | | |
|---|---|---|---|
| Appraised value of entire etate, | $53,814,762.00 | | |
| Deductions, | 757,571.20 | | |
| Net taxable estate, | $53,057,191.60 | " | |
| Widow's share: one-third | $17,685,730.26 | " | |
| Children's share: two-twenty-sevenths each, Nine shares × $3,930,162.28 | 35,371,460.54 | " | |
| | $53,057,190.80 | | |

Widow's share.

| Tax | Progression & Rate | |
|---|---|---|
| | $ 5,000.00 Exempt | " |
| $ 450.00 | 45,000.00 1% | " |
| 1,500.00 | 100,000.00 1½% | " |
| 2,000.00 | 100,000.00 2% | " |
| 523,071.91 | 17,435,730.26 3% | " |
| $527,021.91 | $17,685,730.26 | |

Each child's share.

| Tax | Progression & Rate | |
|---|---|---|
| | $ 5,000.00 Exempt | " |
| $ 450.00 | 45,000.00 1% | " |
| 1,500.00 | 100,000.00 1½% | " |
| 2,000.00 | 100,000.00 2% | " |
| 110,404.86 | 3,680,162.28 3% | " |
| $114,354.86 | $3,930,162.28 | |

| | | |
|---|---|---|
| Tax on nine shares | $1,029,193.81 | " |
| Tax on widow's share | 527,021.91 | " |
| Total tax, | $1,556,215.72 | |

## CALCULATION OF TAX ON NEW JERSEY FRACTION OF THE HILL ESTATE WITH PRO RATED EXEMPTIONS AND APPLICATION OF PROGRESSIVE RATES IN DETAIL, AS REQUIRED BY THE RATIO METHOD

New Jersey percentage.

| | | |
|---|---|---|
| 4.206454% | $2,217,564.68 | Value of N. J. fraction |
| " | 32,624.80 | N. J. deductions |
| " | $2,284,939.88 | Net N. J. taxable estate |
| " | $ 761,653.97 | Widow's N. J. fraction |
| | | Children's N. J. fraction |
| " | Nine shares × $169,253.99, | 1,523,285.91 |
| | | $2,284,939.88 |

Widow's N. J. fraction.

| Progression & Rate | | Tax |
|---|---|---|
| $ 215.227 Exempt | " | |
| 1,927.943 1% | " | $ 19.28 |
| 4,306.54 1½% | " | 64.59 |
| 4,306.54 2% | " | 86.13 |
| 750,887.62 3% | " | 22,526.63 |
| $761,653.97 | | $22,696.73 |

Each child's N. J. fraction.

| Progression & Rate | | Tax |
|---|---|---|
| $ 215.227 Exempt | " | |
| 1,927.943 1% | " | $ 19.28 |
| 4,306.54 1½% | " | 64.59 |
| 4,306.54 2% | " | 86.13 |
| 158,457.64 3% | " | 4,754.63 |
| $169,253.99 | | $ 4,924.73 |

| | | |
|---|---|---|
| Tax on 9 shares N. J. fraction | | $44,322.62 |
| Tax on widow's N. J. fraction | | 22,696.74 |
| Total tax on N. J. fraction of estate | | $67,019.36 |

larger burden of tax upon the New Jersey fraction *if regarded as a New Jersey whole,* when compared with a resident decedent's estate *no larger in total amount than the non-resident's New Jersey fraction.* They should compare the tax on the non-resident's New Jersey fraction with the tax on a like New Jersey fraction of a resident decedent of like total estate but with a like amount of personalty without the State.

*The comparison of things which are unequal necessarily results in inequality.*

The proper comparison of the justice or injustice of succession taxes as against the estates of resident and non-resident decedents is not, of course, between the burden imposed upon the whole estate of the resident decedent and the New Jersey fraction of a New Jersey non-resident decedent. The plaintiffs in error seem to think that the comparison can only be made between the whole estate of the New Jersey decedent and the New Jersey fraction of the non-resident decedent. *To concede this would be to concede the propriety of discrimination against the estate of the resident decedent.* If a man die resident in New Jersey worth a million dollars with his entire estate subject to tax there, and another man dies worth a million dollars resident in New York, with only a hundred thousand dollars of his estate in New Jersey, New Jersey does not discriminate against the successors to the New Jersey property of the New York decedent if it considers, in the determination of the tax to be put upon the successors, that they should bear the same

proportion of the burden imposed by succession taxes upon a like estate in New Jersey that the New Jersey property, one hundred thousand dollars in amount, bears to the total estate of the New York decedent of one million dollars. The two citizens die in different commonwealths but leaving estates of the same value, and the imposition of an exactly proportionate burden on the New Jersey property of the New York decedent is just, both from the standpoint of sound political economy and good government.

Any possible discrimination claimed, by reason of the exclusion, from the ratio provision, in the New Jersey term of the proportion, of New Jersey property specifically bequeathed or devised, is nothing more than the exercise of the power of exemption by the legislature applicable to the property specifically bequeathed or devised.

If any differences arise as between specific legatees and general legatees or residuary legatees of like relationship to the decedent, they result from the provisions of the will and not from any individual discrimination by the law against persons in the same degree of relationship to the decedent. It is the privilege of a testator to give to persons, within the same degree, different amounts, which might result in different tax contributions upon the respective successions. The succession to the specific bequest of New Jersey property is definitely of property in New Jersey, and plainly within the power of exemption of the legislature. The

succession of general legatees or residuary legatees to property belonging to the estate of a non-resident decedent situate in the State of New Jersey is not to the particular New Jersey property, as no particular portion of the New Jersey assets passes to such a distributee.

That the proviso in respect to specific gifts does not discriminate against the general legatee is sufficiently illustrated by the Maxwell case. The plaintiffs in error in that case are not adversely affected by the alleged discrimination in favor of specific legatees. If the proviso relating to specific legatees were disregarded by the Comptroller, or not found in the law, the tax in the Maxwell case at bar would be greater than that assessed. The inclusion of the New Jersey stock specifically bequeathed would increase the New Jersey percentage of the entire estate from 21.59% to 28%, and the tax from $29,071.68, as assessed by the Comptroller, to $29,549.67.

It is true that the State of New Jersey cannot tax real estate without its jurisdiction, and that it has not undertaken to set up any ratio method for its inclusion in determining the amount of succession taxes on the property of resident decedents, and that it has included in the ratio calculation, applicable to New Jersey property of the estates of non-resident decedents, the real estate of the non-resident decedent without the state. Illustrations are quite possible where incidental effect in the amount

of the tax may result by inclusion or exclusion of real estate or in variant proportions of real and personal property, but these possible variances do not interfere with the substantial uniformity of the application of the ratio method.

For instance, in the Maxwell case there is, in a total estate of $3,969,333.25, a trifling amount of $4,250, representing real property in the State of Idaho, and such real property is the only real property held by the estate (Case, page 5). The inclusion of such real estate in the computation of the tax increases the tax exactly *seventy-seven cents.* If excluded, the residue is reduced by $4,250, thus decreasing the assumed New Jersey tax on the residue by 3% on $4,250, the tax on such residue being in such case $97,262.75 instead of $97,390.25; but the proportion of the New Jersey property to the whole is increased from 21.59232% to 21.61755%, making a total tax on the residue of $21,025.78 instead of $21,026.55.

So in the Hill case there is in other jurisdictions, in a total estate of $53,814,762, real property of the value of $1,885,120. The inclusion of such real estate in the computation of the tax increases the tax exactly $91.51. By its omission the proportion of the New Jersey property to the whole would be increased from 4.3065% to 4.4628% and the total tax would be $66,926.92 instead of $67,018.43.

If the real property of non-resident decedents located without New Jersey could not lawfully be included in the total estate the law could readily be upheld in all other respects

and the foreign real property be eliminated from the equation. That would mean nothing more than letting the law stand as it was before that particular inclusion was brought into section 12 by the amendment of 1914, and the rejection of that feature would not of necessity require the Court to declare the whole amendment of 1914 unconstitutional.

*It might indeed require that so much of the second amendment of 1914 as relieves intangibles owned by non-resident decedents should fall as a part of the same scheme, thus leaving non-resident estates subject to taxation on all property within the state.* This very substantial omission of property of non-resident decedents by the amendment of 1914 probably greatly exceeds in practical everyday experience the value of the real estate of resident decedents located without the State of New Jersey. Illustrations are easily imaginable which would demonstrate the liberality shown to non-resident estates in permitting succession free from tax to a large class of property—debts, bank deposits, bonds, mortgages, commercial paper—actually having a *situs* within the state, succession to which is taxed in the case of resident decedents.

The actual differences, due to the inclusion of real estate in the total property of non-resident decedents for the application of the ratio, and to the exclusion from the New Jersey taxables of non-resident decedents of important elements of personal property actually having a *situs* in New Jersey, the inclusion being ap-

parently to the detriment of the non-resident decedent and the exclusion being palpably in favor of the non-resident decedent, are not great enough to destroy the substantial equality of the working of the ratio method.

Such trifling differences in the practical working of the tax plan do not depart from substantial equality and are not discriminating within the decisions of this Court.

The taxes under attack are not property taxes but are excise taxes, and Mr. Justice Hughes, in speaking for this Court in *Kansas City, F. C. & M. R. Co.* v. *Botkin,* 240 U. S., 227, in dealing with an excise tax imposed upon railways by the State of Kansas attacked on the ground that it sought to tax property beyond the jurisdiction of the state, said:

> "The selected measure may appear to be simply a matter of convenience in computation, and may furnish no basis whatever for the conclusion that the effort is made to reach subjects withdrawn from the taxing authority. We have recently had occasion (*Baltic Min. Co.* v. *Massachusetts,* 231 U. S., 68, 83) to emphasize the necessary caution that 'every case involving the validity of a tax must be decided upon its own facts'; and if the tax purports to be laid upon a subject within the taxing power of the state it is not to be condemned by the application of any artificial rule, but only where the conclusion is required that its necessary operation and effect is to make it a prohibited exaction."

And in the opinion rendered at this term in *Mount Saint Mary's Cemetery Association* v.

*Mullins,* the Court reiterated that "it does not interfere with the taxation and assessment laws of the States as violative of the Fourteenth Amendment unless the State's action has been palpably arbitrary or grossly unequal in its application to the persons concerned."

The ratio provision does not produce "gross inequality," nor is the distinction between the estates of residents and non-residents "palpably arbitrary."

## IV.

**The New Jersey statutes under examination are not in contravention of that clause of the Fourteenth Amendment which prescribes that no State shall deny to any person within its jurisdiction the equal protection of the laws.**

*It has appeared that neither under the first paragraph of section 2 of Article IV. of the Federal Constitution nor under the Fourteenth Amendment is there any extension of the privileges and immunities of citizenship beyond the natural life of the citizen; and also that the provisions of the Fourteenth Amendment, that no State shall deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the law, do not include the dead.*

It has also been shown that there is nothing in the inheritance tax laws of New Jersey interfering in any way with the privileges or immunities of any citizen of any state in his lifetime.

He is as free to inherit, purchase, lease, sell, hold and convey real and personal property in New Jersey or elsewhere, as free to enjoy his property in New Jersey or elsewhere, and as fully entitled to the equal protection of the laws of this State as to his property within New Jersey or elsewhere, as though the New Jersey inheritance tax laws had never been passed.

It is further apparent that there is no provision of the Federal Constitution, or, indeed, of the New Jersey Constitution, which secures the right to anyone, resident or non-resident, to control or dispose of his property after death, nor the right to anyone, whether kindred or not, to take it by inheritance. New Jersey permits wills disposing of real and personal property to be made by all persons within its jurisdiction, pursuant to statutory conditions, and provides for successors to real and personal property as to which no testamentary appointment is made, but there is no Federal regulation or compulsion involved in the New Jersey laws.

*Assuming now, though not admitting except for argument's sake, that some discrimination results in the application of the ratio method to the New Jersey property of non-resident decedents, the tax is none the less a valid imposition. Inequalities or differences in result are in any event but the occasional and incidental consequence of a classification which is not arbitrary, or founded on hostile discrimination, but which is based on reason and good policy, and with reasonable regard to the purpose of the legislation and the nature of its subject matter.*

*Such classification, under repeated decisions of this Court, is permissible under the provisions of the Federal Constitution.*

In the absence of direct Federal regulation, plaintiffs-in-error appeal to the Federal Constitution on the ground that the New Jersey taxes on successions deny to persons within the jurisdiction of that state the equal protection of the laws assured by the Fourteenth Amendment, as between successors to property of resident decedents and successors to property within the state of non-resident decedents.

The successors of both classes may be resident or non-resident and no discrimination is alleged as between the successors in either class. The claim is inequality between the classes as such, by reason of the application of the so-called ratio provision of the New Jersey law, as amended in 1914, applied to the ascertainment of the tax upon successions to the taxable New Jersey property of non-resident decedents.

To understand this claim and its attempted application it is unnecessary to re-examine at length the State legislation under which the taxes questioned were levied. Some restatement in the course of the argument may, however, be unavoidable.

It will appear by reference to the history of the legislation set forth in this brief, beginning on page 5, that the legislature has in effect classified property subjected to the transfer tax into two classes—that of resident and non-resident decedents—and applied the same rate to one

class—property of resident decedents—directly, and to the other class—New Jersey property of non-resident decedents—by the ratio method.

Inquiry as to the entire property of a taxpayer within and without the jurisdiction for the purpose of assessing the property within the jurisdiction is not obnoxious to the Federal Constitution. Such inquiry is a feature of many tax laws which have been upheld by the Supreme Court of the United States; for example:

*Adams Ex. Co.* v. *Ohio State Auditor*, 165 U. S., 194; 166 U. S., 185.

*American Ex. Co.* v. *Indiana*, 165 U. S., 256.

*Adams Ex. Co.* v. *Kentucky*, 166 U. S., 171.

*St. Louis & W. R. Co.* v. *Arkansas*, 235 U. S., 350.

*Kansas City, etc., Ry.* v. *Botkin, supra.*

Plaintiffs in error in their brief (page 25, *et seq.*), analyze the facts of these cases, or some of them, with a view to demonstrating the inapplicability of the citation by the Court below in support of the validity of the New Jersey transfer tax laws in their relation to the estates of non-resident decedents. These cases are not cited by the Court below or by counsel for the State, except as illustrative of the principle, that, for the purpose of ascertaining the New Jersey property subject to the tax or for calculating the amount of the tax imposed thereon, the

State may include ascertainment of the entire property within and without the State in the process of determining the amount of the New Jersey property and of the tax to be imposed thereon. It is not pretended by the State that New Jersey has any power to tax property outside of its jurisdiction and the allegation of plaintiffs in error that the State has attempted so to do, or intended so to do, is not only not admitted but positively denied.

The Federal Constitution does not require exact equality of taxation on property in this State as between citizens of this and another State. As was said by Mr. Justice Brewer in his dissenting opinion in *Magoun* v. *Illinois Trust & Savings Bank, supra*, absolute equality is not obtainable. The fact that a law, whether this law or other, works some degree of inequality in its actual operation does not prove its unconstitutionality.

*Cotting* v. *Kansas City Stockyards Co.*, 183 U. S., 79.

In the quotation we have already made from *Magoun* v. *Illinois Trust & Savings Bank* the wide latitude of the State in matters of taxation has been shown, and we have seen that tax regulations, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature notwithstanding any of the provisions of the Federal Constitution.

In the course of a discussion on the Fourteenth Amendment, it is said, in the opinion in

the same case, that such amendment was not intended to compel the State to adopt an iron clad rule of taxation, and the learned Justice quoted approvingly the language of Mr. Justice Bradley in *Bell's Gap R. R. Co.* v. *Pennsylvania*, 134 U. S., 232, as to the range of the State's power, as follows:

> "It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their constitution."

And Mr. Justice Pitney, in *St. Louis & W. R. Co.* v. *Arkansas*, *supra*, said of the Fourteenth Amendment:

> "Nothing in the Fourteenth Amendment imposes any ironclad rule upon the states with respect to their internal taxation, or prevents them from imposing double taxation, or any other form of unequal taxation, so long as the inequality is not based upon arbitrary distinctions."

The case of *Board of Education* v. *Illinois*, 203 U. S., 553; 8 Annotated Cases, 157, affirming *in re Speed's Estate*, 216 Ill., 23; 74 N. E.,

809; 108 Am. Stat., 189, adjudges valid an exemption from inheritance taxation of bequests for charitable uses whether to natural persons or corporations, *confined, however, by the construction of the Illinois court, to residents of the State.* Mr. Justice McKenna quotes the following language of the lower Court:

> "'In laying such a tax the legislature may consider the relation which the person or corporation given the right of succession sustains to the deceased, to the property, or to the state, and may regulate the amount of the tax to be required in view of such relation, and in exercising this power may lay a tax on the right of one class of persons or corporations to take, and may deem it wise to impose no tax upon the right of other classes of persons or corporations to take.'"

He then adds:

> "A Federal Court would hesitate indeed to put impediments on this power or declare invalid any classification of persons or corporations that had reasonable regard to the purposes of the state and its legislation."

The plaintiffs-in-error attempt to distinguish this case on the ground that a corporation was involved. (Brief, p. 42.) We reply that corporations are "persons" entitled to "equal protection of the laws," and that the decision was not based on the distinctions between domestic and foreign corporations.

Mr. Justice McKenna, in *Citizens' Telephone Company* v. *Fuller*, 229 U. S., 322, affirming 185 Fed., 694, after citing cases, says:

> "They illustrate the power of the legislature of the state over the subjects of tax-

ation, and the range of discrimination which may be exercised in classifying those subjects when not obviously exercised in a spirit of prejudice and favoritism. Cook *v.* Marshall County, 196 U. S., 274; Missouri *v.* Dockery, 191 U. S., 165. The cases decided subsequent to the decision in Bell's Gap R. Co. *v.* Pennsylvania have applied its principle to many varying instances. Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. Keeney *v.* New York, 222 U. S., 536. The state is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' See Quong *v.* Kirkendall, 223 U. S., 59, 62, 63. Thus defined and thus limited, it is a vital principle, giving to government freedom to meet its exigencies, not binding its action by rigid formulas, but apportioning its burdens, and permitting it to make those 'discriminations which the best interests of society require.' ''

Under one of the inheritance tax statutes of New York, both personal and real property of a non-resident, was subject to tax; but through an imperfection in the machinery the State was able to collect its taxes only if there was realty within the State. Hence, a non-resident owner of personalty paid a tax on it only if he happened also to own New York realty. This situation resulting from statute, was held not to constitute a denial of equal protection in *Beers* v. *Glynn*, 211 U. S., 477, affirming 186 N. Y., 549; 79 N. E., 1110.

In *Billings* v. *Illinois*, 188 U. S., 97, affirming 189 Ill., 472; 59 N. E., 798, it was held that equal protection of the laws was not denied by an inheritance tax law under which life estate were taxable when the remainder passed to issue of the decedent but not when the remainder passed to collaterals or strangers. The opinion contains a most illuminating discussion of the problem of classification by Mr. Justice McKenna.

This Court has vindicated the New Jersey inheritance tax law, as well as many others not materially unlike it, against the charge of antagonism to the Federal Constitution because of exemptions, applications of different rates to near relatives and collaterals and strangers, difference in rates by reason of the amount enjoyed by the successor, progressive impositions because of amounts, etc.

*Campbell* v. *California*, 200 U. S., 87.

We have already shown the legislative purpose to impose an equal burden on successions to estates of resident and non-resident decedents of comparable wealth, and we have exhibited the practical equality secured in practice by the application of the ratio method to successions to the property of non-resident decedents.

If, however, this Court should construe the law in another way than that adopted by the State courts and should find the prorating of the exemptions and progressions as practised not justified by the statute, but as necessarily resulting in a greater burden upon successions

to the estates of non-resident decedents than upon successions to estates of resident decedents the legislation is easily vindicated against the charge of violation of the Federal Constitution.

**A different policy on the part of the State in the imposition of succession taxes as between successions to the property of resident decedents and the property within the jurisdiction of non-resident decedents, is not in contravention of the Federal Constitution.**

*District of Columbia* v. *Brooke,* 214 U. S, 138 (and cases cited therein).

In that case the Court dealt with the question as to whether equal protection had been denied to a non-resident of the district by a law providing for the establishment of a sewerage system, compliance with which was enforced in the case of a resident by criminal punishment and in the case of a non-resident by making the cost of the improvement a lien on the property. As to the alleged invalidity of this law, Mr. Justice McKenna said:

> "Passing on that amendment, we have repeatedly decided—so often that a citation of the cases is unnecessary—that it does not take from the States the power of classification. And also that such classification need not be either logically appropriate or scientifically accurate. The problems which are met in the government of human beings are different from those involved in the examination of the objects of the physical world, and assigning them to their proper associates. A wide range of discretion, therefore, is necessary in legislation to make it practical, and we have often said that the

courts cannot be made a refuge from ill-advised, unjust, or oppressive laws. Billings *v.* Illinois, 188 U. S., 97; Heath & M. Mfg. Co. *v.* Worst, 207 U. S., 338. In the light of these principles the contentions of defendant-in-error must be judged. The act in controversy makes a distinction in its provision between resident and non-resident lot owners, but this is a proper basis for classification. Regarded abstractly as human beings, regarded abstractly as lot owners, no legal difference may be observed between residents and non-residents; but, regarded in their relation to their respective lots under regulating laws, the limitations upon jurisdiction, and the power to reach one and not the other, important differences immediately appear. We said in St. John *v.* New York, 201 U. S. at page 637, not only the purpose of a law must be considered, but the means of its administration—the ways it may be defeated. Legislation, to be practical and efficient, must regard this special purpose as well as the ultimate purpose. This was in effect repeated in Field *v.* Barber Asphalt Paving Co., 194 U. S., 618, where a privilege to protest against a street improvement, given by the statute assailed to resident property owners and denied to non-resident property owners, was sustained, and the statute held not to violate the equality clause of the 14th Amendment. See Travellers' Ins. Co. *v.* Connecticut, 185 U. S., 364."

The successors to the property within New Jersey's jurisdiction of non-resident decedents are not, by the Federal Constitution, guaranteed equality either in rate or method of assessment

with the successors to property of resident decedents.

> "Whatever extension may properly be given to the provision of the Constitution which forbids the denial by a State to any person or selected number of persons within its jurisdiction of equal protection in the enjoyment of these civil rights secured by its fundamental law to all citizens, it cannot cover the establishment by this amendment of the constitutional rule of 'equality in taxation.' The broad dictum of the United States Court, speaking by Mr. Justice Miller, that while State constitutions may contain provisions against inequality in taxation 'the Federal Constitution imposes no restraints on the States in that regard' (Davidson *v.* New Orleans (1877), 96 U. S., 97, 105) has been fully confirmed by the logic of recent decisions. State *v.* Travellers' Insurance Co. (1900), 72 Conn., 255, affirmed (1902) 185 U. S., 364."
>
> 9 Fed. Stats. Ann., 608 note.

The succession subjected to the tax and the rate are fixed by the law without discrimination, and the direct and ratio methods of application of the rate to the succession are after all but mere machinery appropriately applied to the succession to the property of resident decedents, in the one case, by direct calculation, and to the succession to the taxable property of non-resident decedents, in the other case, by the ratio. The distinction is applicable, pointed out by Justice Depue in *Central R. R. Co.* v. *State Board of Assessors*, 48 N. J. L., 337, that every system of taxation consists of two parts—the one relating to the designation of the persons or things sub-

ject to taxation and the apportionment of the tax burden in the ratio prescribed by law; the other the collection of taxes by the enforced payment thereof. The latter relates to mere machinery and neither State nor Federal constitutions interfere with differences in machinery. They do not change the rate or disturb the substantial equality of the burden.

The absolute control of the State over succession to property has already appeared from the authorities cited, but we may here insert by way of further illustration of this power a quotation from the opinion of the Court of Appeals of Maryland in *State* v. *Dalrymple,* 70 Md., 294, quoted approvingly by Mr. Justice Brown in *United States* v. *Perkins,* 163 U. S., 625, and again by Mr. Justice Shiras in *Plummer* v. *Coler,* 178 U. S., 115, 131.

> "Possessing then the plenary powers indicated, it necessarily follows that the State, in allowing property to be disposed of by will and in designating who shall take such property where there is no will, may prescribe such conditions not in conflict with or forbidden by the organic law as the legislature may deem expedient. These conditions, subject to the limitations named, are consequently wholly within the discretion of the General Assembly. The act that we are now considering plainly intended to require that a person taking the benefit of the civil right secured to him under our law should pay a certain premium for its enjoyment; in other words, one of the conditions upon which strangers and collateral kindred may acquire the decedent's property, which is subject to the domination of our laws, is that there shall be paid out of such property a tax of two and a half per cent. into the treasury of

the State. This, therefore, is not a tax upon the property itself but is merely a price exacted by the State for the privilege accorded in permitting property so situated to be transferred by will or by descent or by distribution."

Mr. Justice Shiras, in *Plummer* v. *Coler,* in sustaining the validity of a tax imposed under the inheritance tax laws of the State of New York upon a legacy consisting of United States bonds, issued under a Federal statute declaring them to be exempt from State taxation in any form, found a perfect analogy between the imposition of inheritance taxes, under the plenary power of the State to control the succession to property, and franchise taxes imposed by the State upon corporations, both foreign and domestic. *Both taxes are excise taxes and are imposed as a condition of enjoyment of privileges absolutely under the control of the State.*

There can be no doubt about the power of the State to discriminate between resident and nonresident corporations in the matter of franchise taxes. That is a matter resting entirely within the control of the State and not a matter of Federal law.

*Horn Silver Mining Co.* v. *New York,* 143 U. S., 305.

The exceptions or qualifications of this doctrine, referred to in the opinion of Mr. Justice Field in the last cited case, do not need to be considered on this argument.

See also *Cheney Bros.* v. *Massachusetts,* 246 U. S., 147.

*Kansas City M. & B. R. Co.* v. *Stiles,* 242 U. S., 111.

Assuming now (but not admitting except for the purpose of argument) that some inequality may result from the operation of the New Jersey succession tax laws, as between succession to the estates of resident decedents and the New Jersey portion of estates of non-resident decedents, if such difference is not based upon arbitrary distinctions and is not obviously the result of prejudice and favoritism but is the result of a classification along natural lines or by common characteristics, the New Jersey act would not antagonize any provision of the Federal Constitution or of the amendments thereto. To quote the words of Mr. Justice McKenna in *Citizens' Telephone Company* v. *Fuller, supra:*

> "Granting the power of classification, we must grant government the right to select the differences, upon which the classification shall be based, and they need not be great or conspicuous."

At the outset it may be said that classification, to the extent, at least, of difference in procedure, is forced upon the State and is not a matter of choice. In the case of a resident decedent the thing taxed is the universal succession to all personal property (*Bullen* v. *Wisconsin*, 240 U. S., 625, 631, affirming 143 Wis., 512; 128 N. W., 109; 139 Am. St., 1114); the power to tax is derived from the universally admitted principle that movables have their *situs* at the domicile of the owner; and the enforcement of the tax is based upon jurisdiction over the person of the universal successor, namely, the executor or administrator. The

procedure in the case of a resident estate is essentially *in personam.*

In the case of a non-resident decedent the thing taxed is the local succession to the property actually situated within the State; the power to tax is based on the control of the State over such property, and the enforcement of the tax is necessarily *in rem.*

That there is a radical difference in situation from the standpoint of the State imposing a tax upon the privilege of succession, between successors to the property of resident decedents and successors to the property of non-resident decedents, is apparent. Indeed, many States levy a succession tax only on the estates of *residents,* a common recognition of the basis for classification. This was in effect the policy of New Jersey under the Act of 1894, as construed in *Neilson* v. *Russell, supra.*

There is, of course, no presumption that the successors to the property within the State jurisdiction of non-resident decedents would all be non-residents of the State. Indeed they might all be residents.

There is a perfectly apparent and natural distinction between the succession to property of the estates of resident decedents and the succession to property of the estates of non-resident decedents. The whole matter of the settlement of estates and the distribution thereof is so differentiated, as between estates of resident decedents and of non-resident decedents, as to establish a natural division into two classes, with distinguishing characteristics as to their rela-

tion to the State, requiring separate treatment for the protection of creditors and distributees, and for the securing to the State the payment of, and for the enforced collection of, succession taxes on property within this jurisdiction of the estates of resident and non-resident decedents.

It is still true that a foreign administrator or executor cannot be sued in the courts of New Jersey. A foreign administrator or executor can only sue there upon compliance with statutory conditions.

It is only because of comity, not by compulsion, constitutional or otherwise (*Baker* v. *Baker, Eccles & Co., supra,* 242 U. S., 394), that New Jersey extends to non-resident executors the privilege of succeeding to personal property within its jurisdiction according to a *foreign law,* the law of the domicile. For some purposes original or ancillary letters of administration on property of non-resident decedents, having its actual *situs* in the State, are essential, while for other purposes, under rules of comity or statutes originating in comity, recognition of the authority of foreign executors or administrators is sufficient to protect citizens of the State, in the transaction of business relating to the property of non-resident decedents having its actual *situs* here, even against subsequent letters of administration, original or ancillary, taken out here.

Foreign wills are recognized by comity for the transmission of personal property, the *situs* of which is in New Jersey if executed in ac-

cordance with the law of the domicile of the testator, but foreign wills to transmit real estate must be published in accordance with State law. No one questions the right of the State of *situs* to thus regulate the succession, and to impose conditions on succession by will.

The laws of New Jersey and other States teem with provisions peculiar to the administration, testamentary and non-testamentary, of the estates of resident and non-resident decedents and differentiating them.

Local administration of the estates of resident decedents makes easy the imposition and collection of succession taxes. The administrators and executors are not only subject to the control of the State laws, but also to the control of the State courts.

The imposition and collection of succession taxes on property within the jurisdiction of non-resident decedents cannot be accomplished by like easy methods or without much additional trouble and expense. The hazard of non-collection is much greater and the trouble and expense of enforced collection is enhanced. Nor can there be any doubt that, under the most rigid law, a larger proportion of the property of non-resident decedents would altogether escape transfer taxation than of resident decedents under the local administration of the estates of resident decedents. The State can, of course, protect itself in the collection of the tax by lien on the property within jurisdiction, but a different degree of care and different methods are appropriate and essential to dis-

close to the State the property of the non-resident decedent and secure to the State the succession taxes on property within its jurisdiction of non-resident decedents. (See for illustration *Senff* v. *Edwards,* 85 N. J. L., 67.) Classification is reasonable and, as we have already seen, as to procedure is absolutely necessary. The very conditions justify not only classification but the application to the class comprising the succession to non-resident estates of a larger tax commensurate with the difference in conditions.

There is greater difficulty, too, in ascertaining the quantum of the total estate of a non-resident decedent, and, while it is true that no tax can be imposed except on property within the jurisdiction, none the less fair consideration in the imposition of taxes on the property of a non-resident decedent, and particularly in the application of allowances for exemptions and debts and administration expenses, require that attention should be given, in order to preserve any reasonable degree of equality with the successors to the property of resident decedents, to the proportion of the non-resident decedents' wealth in the State to his total wealth.

The legislature may, to equalize the proportional contribution of the successors to property within the State of a non-resident decedent whose total wealth is in equality with a resident decedent, reasonably establish as a condition of succession to the property in New Jersey of non-resident decedents a rule of assess-

ment, which, when applied, will compel comparable contributions from estates of equal wealth, whether of resident or non-resident decedents. In the one case the State has within its jurisdiction the property, not merely distinguished by *situs* but drawn to the person of the resident. In the other the State has within its jurisdiction only the fraction of the estate distinguished by *situs*, but the State is not therefore compelled to regard the fraction as the whole in determining the propriety of a progressive tax based on the size of an estate, or the large amount of a bequest or distributive share. If it appears that the direct application of a progressive rate will not apply to the non-resident fraction the intended progression (and, because a fraction must be less than a whole, the intended progression cannot apply without abandonment of the assumed equality of wealth of the resident and non-resident decedents) it is competent for the legislature to equalize the imposition of the tax as between the estates of the two decedents by applying the rate to the two respectively by such different methods as will secure such equality.

*The progressive rate is of itself unobjectionable and finds its justification in the amount of the estates to the succession of which it is applied.*

The theory, on which the application of the progressive rate is justified, does not insist that the total wealth required for the *measurement* of its imposition shall be within the jurisdiction of the State. That method of applying it to a frac-

tion of total wealth within the jurisdiction, which will make its application comparable to its application to an estate of like total all within the jurisdiction, assures practical equality as between resident and non-resident estates and is clearly within the power of the legislature which imposes it and the theory which applies it. Succession taxes represent an excise or duty upon the right or privilege of succession, and the discretion of the State in their imposition has not been limited by constitutional restrictions. Assume a citizen of New Jersey to have a million dollars of property all within this State, and also assume a citizen of New York to have a million dollars scattered in New Jersey and nine other jurisdictions in equal parts. Why should New Jersey impose a succession tax, of lighter relative burden on the succession in New Jersey to the property in New Jersey of the millionaire resident of New York, all of whose property, except one hundred thousand dollars, is without the State, than on the millionaire resident of New Jersey all of whose property is within the State? The ratio method of Section 12 makes the estate of the New York resident millionaire decedent, with one-tenth of the property in New Jersey, pay one-tenth of the succession tax assessable against the like estate of the New Jersey resident millionaire decedent, on the ten-tenths of property in New Jersey.

*The amount of property* which can be taxed by any one State is necessarily limited to that within its jurisdiction; but the plaintiffs-in-error would have not only the amount of property sub-

ject to tax, but also *the rate at which it should be taxed,* dependent upon the fact of location. It is not perceived that any legal, moral, or economic consideration requires or persuades that *rate* should be determined by any such test. Under such a test an estate would escape a progressixe tax entirely, by mere diversification of investment (except insofar as subject to tax on "movables" in the State of domicile). In short, the appellants claim that succession taxes can be levied at a progressive rate *only by the State of domicile.*

*Inasmuch as the ratio provision which by itself is conceded to be unobjectionable was introduced into the law earlier than the provisions for taxation at the graduated rate, any result from the combined operation of the ratio provision and the graduated rate cannot have occurred from a deliberate design by the legislature to conceal in the ratio provision a formula from which discrimination would result.*

The maximum differences in the possible application of the progressive rates, even as advanced and exaggerated by the plaintiffs-in-error, on any one bequest, disappear if the legislative right be conceded to impose the rate upon the New Jersey fraction by a method which will equalize the tax burden as between estates of resident and non-resident decedents of equal total wealth. *This is accomplished by the classification under the New Jersey statute.* Remembering that the progressive tax is justifiable because of the large amount of an estate, that the theory is not limited to estates of resident de-

cedents, and that the application of the theory against the succession to the property in the State of a non-resident decedent, whose total estate is partly within and partly without the jurisdiction, is accomplished by so applying the rate to the New Jersey fraction as to impose on such fraction a tax proportionate to the tax upon a New Jersey resident estate of like total with the whole estate of the non-resident decedent, the New Jersey statute, in theory and fact, imposes a tax free from substantial differences in burden as between the two classes under comparable conditions.

*There is entirely apart from these considerations another justification for the segregation by the State of the property in the State of non-resident decedents for the purpose of transfer tax on the succession, a reason which would in fact justify a higher imposition on that succession than on the succession to the property of resident decedents.*

Such justification rests on the differing "relation * * * to the State" (*Board of Education* v. *Illinois, supra*) of residents and non-residents, and is a "discrimination which the best interests of society require" (*Citizens Telephone Co.* v. *Fuller, supra*), or which the legislature may deem to be required.

There can be no doubt that at the time of the adoption of the Federal Constitution the citizens of the other States were aliens to New Jersey, and the ownership of property in the State by such aliens could have been absolutely prohibited. If that were still the case, New Jersey could

clearly have permitted ownership of property in the State by aliens resident in the other States on such terms as New Jersey chose to prescribe. The Constitution of the United States prevents New Jersey from denying the right to have property in New Jersey to citizens of the other States or of the United States, but the guaranty protecting against such denial ceases with the death of the non-resident in whose favor it operates. The law of alienage as applied to the denial of the right to hold property is based on the want of citizenship and the absence of the duty of allegiance. Citizenship involves reciprocal duties on the part of the State to the citizen and on the part of the citizen of the State. In the case of citizens of other States the Constitution of the United States imposes upon the State a condition which compels the protection by the State of the property within the State of citizens of other States, the State receiving in return no contar benefit from the performance by the non-resident property owner of the duties of citizenship. The death of the non-resident revives untrammelled all the rights of the State existent at the adoption of the Federal Constitution applicable to the succession to property, and the State is free to classify by itself the succession to property in the State of non-resident decedents, so long as it does not infringe constitutional guaranties operating in the right of the successors as between such successors. Such succession could be logically subjected to a different transfer tax burden than that imposed on transfers of property of resident decedents.

These considerations, taken with the soundest views of the economic basis of succession taxes, point to a justification for laying a heavier impost upon the estates of non-residents than upon the estates of residents. While it is doubtless true that there are several different bases for the succession tax, one of the weightiest reasons for its levy is found in the following consideration, supported by the ablest thinkers on this question.

In the existent conditions surrounding the relations of owners of wealth to society, and particularly in view of the vast extension of property holding in the form of intangibles and the difficulty of ascertaining the ownership and discovering the extent of property holdings in these forms, and in levying property taxes upon these forms of wealth, it is unquestionably true that owners of property generally, and especially owners of property in these forms, escape during their lifetime full taxation; that is, do not contribute to the State dues proportionate to the benefits derived by them as such property owners. It is not necessary to consider that such owners have evaded taxation—it is enough to say that they have escaped, and in proportion to the amount of their wealth, so proportionately do they escape taxation according to their ability and the benefits received by them. Hence the theory that a succession tax is a form of capitalized income tax payable once for all in consideration of past benefits, payable at the moment when the extent of their wealth is for the first time fully disclosed and conveniently reached by

the taxing power. See *C. F. Bastable on Public Finance,* p. 594. (The Macmillan Co., 1903.) *Richard T. Ely, "Property and Contract in their Relations to the Distribution of Wealth,"* p. 433 (The Macmillan Co., 1914); *Max West, The Inheritance Tax,* 204 (Columbia University Studies in History, Economics and Public Law, Second edition, 1908).

This view commands high judicial, as well as economic, support.

> "For, after all, what is an inheritance tax but a debt exacted by the State for protection afforded during the lifetime of the decedent? It is often impracticable to secure from living persons their fair share of contribution to maintain their administration of the State, and such laws seem intended to enable to secure payment from the estate of the citizen when his final account is settled with the State."
>
> *Plummer* v. *Coler,* 178 U. S., 115, 138.

This view is particularly apt in the case of non-residents, for not only does the non-resident owner of wealth fail to render to the State the ordinary duties of citizenship in the varied forms of political service; not only does he fail to render economic service to the State in the production of wealth, and by the exercise of useful and productive labor, but he escapes also to a greater degree the due and proportionate burden of property taxes. Can it be doubted that, in New Jersey, the non-resident owner of bank deposits, bonds and mortgages, and other forms of intangible property, escapes almost entirely the burden of taxation upon property, notwithstanding which

The ratio provision is by no means peculiar to New Jersey. It appears in the legislation of other states, collected in Appendix B, and appears to be the trend of current legislative thought in respect to the allowance of exemptions and application of progressive rates to the estates of non-resident decedents.

It is also common in the statutes of the Canadian provinces, which, generally speaking, have levied graduated succession duties for a longer period than the states of this country. These acts are also collected in the same appendix. Most of them are revisions of precedent laws.

In considering the significance of the Canadian legislation, it should be borne in mind that the provinces are subject to constitutional limitation against laying taxes upon property not within their jurisdictions.

The taxing power of the provinces has its source in section 92 of the British North America Act of 1867 (30 and 31 Vict., c. 3), which grants to the provinces exclusive power of legislation in relation to

"(2) Direct taxation within the Province in order to the raising of revenue for provincial purposes."

Under this grant it has been held *ultra vires* to levy a succession tax upon property which is locally situate outside of the Province.

*Woodruff* v. *Att. Gen.*, (1908) A. C., 508; 78 L. J., P. C., 10.

*Cotton* v. *Regem*, (1914) A. C., 176; 83 L. J., P. C., 105; case below, *King* v. *Cotton*, 45 Con. S. C. R., 469, 1 D. L. R., 398.

The Canadian Courts have experienced difficulty in determining the exact extent of the limitation upon the powers of the provinces to levy succession taxes under this constitutional grant. It will not be profitable to review the cases, but it seems to be the preponderance of opinion that the maxim *mobilia sequuntur personam* is not applicable to this form of legislation and cannot be the basis of a succession tax upon all of the intangibles owned by a resident decedent. Such a tax, even in the case of a person domiciled within the Province, must be confined to property locally situate within the Province. Having abandoned the maxim referred to, the Courts have much difficulty in determining the local situation of intangibles in various cases which have arisen.

Notwithstanding the above limitations upon the legislative power of the provinces, it does not appear to be questioned that the rate of tax, as well as the allowances of exemptions in respect to property which is subject to duty, may be determined by reference to the aggregate value of all the property wherever situate,—in other words, by the ratio provision.

Most of the statutes have been enacted or revised since the Woodruff case and many since the Cotton case.

In a treatise upon "Provincial and Local Taxation in Canada," by Solomon Vineberg (Columbia University Studies in History Economics and Public Law, volume 52, No. 1), the writer, in a chapter upon the succession

such forms of ownership of wealth would be almost valueless to him were it not for the actual or potential protection afforded by the legislation of this commonwealth, the administration of its laws by the executive power, and the processes of judicial administration of law. Such forms of wealth, moreover, would be at least impaired in value by any failure on the part of the government to perform the functions of organized society, in educating, safeguarding the health of, and promoting the material welfare of, its citizens, aiding and encouraging the commercial and productive activities of the community, and otherwise through its manifold activities directly or indirectly promoting the acquisition, enjoyment and stability of property. To the expense of the performance by the State of these social functions the non-resident contributes little or nothing. To tax the succession to his property—a succession which in most cases is enjoyed by a non-resident—is not to deny either to the dead or to the living the equal protection of the laws, but is to exact a small recompense for the past enjoyment by the one and the assured future enjoyment by the other of the equal protection of just and beneficent laws. Of course, the non-resident successors may not leave the property invested in New Jersey. In that case, the State suffers by the withdrawal of so much wealth.

*That distinctions in the taxation of the succession to property of residents and non-residents, even in respect to rate, are not contrary to natural justice may be deduced from the fact*

*that civilized government has often made such distinctions.*

There are or have been a number of instances in which States of this country have taxed succession by non-resident aliens at substantially higher rates. We may instance the State of Louisiana (see *Mager* v. *Grima,* 8 How., 490; *Frederickson* v. *Louisiana,* 23 How., 445); the State of Iowa (see *re Peterson's Estate,* 151 N. W., 66; L. R. A. 1916 A, 469; *Petersen* v. *Iowa,* 245 U. S., 170); the State of Washington (see *re Stixrud's Estate,* 58 Wash., 339; 109 Pac., 343; 33 L. R. A. N. S., 632); North Dakota (see *Moody* v. *Hagen,* 36 N. D., 471; 162 N. W., 704; L. R. A., 1918 F, 947; affirmed, *sub nom. Skarderud* v. *Tax Commission,* 245 U. S., 633); Hawaii Territory Rev. Laws of 1915, Sec. 1323).

The Provinces of New Brunswick, Saskatchewan, Alberta, Manitoba and Quebec levy a substantially higher rate on successions passing to non-residents (see Appendix B).

The Federal Estate Tax (Act Sept. 8, 1916, 39 Stat., c. 463, p. 777; 6 U. S. Comp. Stat. 1916, Ann., section 6336½, p. 7364), which imposed an estate duty on both residents and non-residents of the United States, provides in section 203 that the net estate of a resident shall be calculated by the allowance, among other things, of one exemption of $50,000, but provides for no such exemption, or any proportionate part thereof, in the case of a non-resident—that is, an alien. The same is true of the Revenue Act of February 24, 1919 (Sec. 403).

duties of the provinces, after reviewing cases dealing with the problems arising out of the constitutional limitation above mentioned and the usual problems caused by conflict of jurisdiction, says at p. 151:

> "The law at present, therefore, seems to be that only property situated within a Province can be taxed by that Province, and that property is so situated when it must be brought into the Province for probate. There is, however, no question as to the right of the Provinces to require that all property of the deceased wherever situated should be taken into consideration in order to estimate the 'aggregate value' of the estate. This provision is made in the succession duty acts of all the Provinces, the aggregate value being ascertained for the purpose of deciding whether or not an estate is dutiable, and to determine the rate of duty, if the estate is subject to the act."

The only judicial references we have found bearing on this specific point are the following:

The case of *Standard Trusts Company* v. *Treasurer of Manitoba,* 51 Canadian Supreme Court Reports 428; 23 Dominion Law Reports 811; affirming 24 Manitoba Law Reports 310; 18 Dominion Law Reports 144; held that where a person domiciled in Manitoba had, before his death, agreed to sell lands in another Province by which he was to remain the owner of the lands until they were fully paid for, such agreements constituted property of his estate within the Province of Manitoba and were subject to succession duty there.

At p. 823 of the Dominion Law Reports, Justice Idington said in his opinion:

> "Counsel for appellant complained that a schedule had to be filed showing the entire estate of the deceased. That is simply as the basis of classification and for the determining of whether or not the deceased and his estate and those getting it fall within the class who could reasonably be asked to contribute to the public revenue. They may in some cases rank the estate as of those which should pay 10%, for example, instead of 5%, or nothing. The severity of it may in many cases be unwise and unjustifiable, but that has nothing to do with the existence of the power. It is merely the scale upon or by which the tax is to be measured."

The case of *Receiver General of New Brunswick* v. *Rosborough*, 48 New Brunswick Reports 285; 24 Dominion Law Reports 354, dealt with the local situation of certain intangibles which were a part of the estate of a resident decedent. Certain of the intangibles in question were held to have a local situation in Nova Scotia, and, hence, to be not liable for duty under the Succession Duty Act, chapter 17, Consolidated Statutes of New Brunswick, 1903, which levied a classified graduated rate of duty according to the amount of the aggregate value of the estate.

At p. 359, Dominion Law Reports, Chief Justice McLeod said:

> "At the argument it was agreed that there should be added to the case a statement that the aggregate value of the estate, including property everywhere, exceeds $200,-

000, but that if the Nova Scotia property is excluded it will be under $200,000. The object, I believe, was to obtain the judgment of the Court upon the question of computing the value of the estate under clause (a) of Sec. 5, and to ascertain whether there should be included in such computation the full value of the estate or only so much thereof as is liable to duty. I have had an opportunity to read the judgment prepared by my brother White, *J.*, and I agree with the conclusion he has arrived at on that question."

At p. 367, Dominion Law Reports, Justice White said:

"At the argument it was agreed to add to the stated case, as originally printed, statement that the aggregate value of the estate, including property everywhere, exceeds $200,000, but if the Nova Scotia property is excluded it will be under $200,000. This was done, as I understand it, with the view to obtain the judgment of the Court upon the question whether, in computing the aggregate value of the estate, under clause (a) and following clauses of Sec. 5, all the property owned by deceased at his death is to be included in such aggregate value, or only so much thereof as is liable to duty.

"I think it quite clear that in such computation all the property owned by the deceased is to be included. While the Legislature can only tax property situate within the Province, it can fix the rate of any tax which it is empoweerd to impose on any basis or at any figure it may see fit. In interpreting the clause in question, we are bound to have regard to the definition of 'property' as given in Sec. 2 (1) of the Act. As I read clause (a) of 5 and succeeding clauses, they appear to me to indicate a

clear intention on the part of the Legislature to make the aggregate value of all the estate owned by the deceased at the time of his death the basis on which the rate of taxation is to be computed and fixed."

Exact equality being a dream in the application of any scheme of taxation, the different situation of estates of resident decedents and non-resident decedents, and the different conditions surrounding the imposition and collection of the tax, are sufficient justification for a different method of imposing the same general plan of taxation upon transfers of property in the State of non-resident decedents and that applied to the transfers of property of resident decedents.

In *Travelers Insurance Company* v. *State of Connecticut*, 185 U. S., 364; *S. C.* below, 73 Conn., 255, 47 Atl., 299, this Court, in an opinion by Mr. Justice Brewer, upheld the taxing law of Connecticut providing for the assessment at a flat uniform rate of the stock of non-resident stockholders in domestic corporations of Connecticut at its market value, with no deduction on account of real estate held by the corporation, although provision for such deduction in assessing resident stockholders was made by the Connecticut law, and the stock of the latter was assessed at the varying rates of the several municipal sub-divisions of the State.

The attack upon the act was based upon paragraph 1 of section 2 of Article IV of the Federal Constitution and the Fourteenth Amendment of the Federal Constitution exact-

ly as in the present case. The Court was not carried away by theories or technicalities. The opinion emphasizes the wide latitude open to the states, notwithstanding the provisions of the Federal Constitution, and expressly holds that a mere inequality in the stress of taxation cannot produce that effect. The case was, of course, much stronger than the present case, because it involved taxes on property as such and not the levy of excise taxes, but it was decided, not on any local constitution but under the very provisions of the Federal Constitution appealed to by the present appellants.

Mr. Justice Brewer said:

> "You cannot put one resident against one non-resident stockholder, and by a comparison of their different burdens determine the validity of the legislation * * *."

Again, approving the following language of the Connecticut court:

> "'Here is no hidden purpose to attack the rights of citizens of other states, no evidence that the underlying intention and real substance of the legislation is to hinder citizens of other states in acquiring and holding property.'"

And further:

> "It is enough to say that the State has secured a reasonably fair distribution of burdens, and that no intentional discrimination has been made against non-residents."

If under the provisions of the Federal Constitution it was competent that the legislature should separate and classify stockholders of a corporation as between resident and non-resi-

dent, certainly there can be no reasonable objection to the grouping together of all successors of property within this State of non-resident decedents and all successors of property of resident decedents. The succession in both instances is under the regulation of this State and the differences which surround the succession in the two classes are sufficient to justify the legislature in differentiating them for the application of a substantially common scheme of imposition of succession taxes. We do not need to consider the provisions of the State Constitution, as they have no application. We are dealing with the requirements of the Federal Constitution.

The State has, by this statute, under a scheme generally applicable to the succession to all property within the jurisdiction, recognized differences between the succession to property of resident decedents and the succession to property located in New Jersey of non-resident decedents, and, without distinguishing in any way the burdens cast upon such sucession as to destination of the property or basic rate of the tax, has imposed different methods of calculation of the tax, direct in the one case and by the ratio method of section 12 in the other case. The legislature has also seen fit to relieve, in determining the amount of the property in New Jersey to which the tax is applicable, the property of non-resident decedents except real estate, tangible personal property and stocks of New Jersey corporations and of national banks located in New Jersey.

It may be that occasionally some small inequalities may result in the application of this scheme of succession tax. It may be that instances of apparent discrimination may be conceived for purposes of illustration. Like conception can be had of discriminations in the other direction. Yet we find no basis in the Federal Constitution or in the decisions of the Federal courts justifying the condemnation of this law as in conflict with the requirements of the Federal Constitution.

Confidently maintaining therefore, the justice and legality of such classification as the legislature has made as between resident and non-resident estates, against the contentions of plaintiffs-in-error, whether founded on the guaranties relating to "privileges and immunities" of citizens, or to "equal protection of the laws," and whether asserted in the supposed constitutional standing either of the deceased owner or of the living successors, we thus conclude and summarize our discussion of the statutory classification, which should, of course, be considered as a whole:

**(1) The situation in which the State finds itself in respect to the enjoyment of property by non-residents justifies the imposition of a different and a greater premium upon the privilege of succeeding to such property upon death. We do not intend to concede the plaintiff's-in-error claim that New Jersey has by the present law imposed a different and greater premium upon the succession to the property in New Jersey of non-resident decedents, but the authorities would support a classification which accomplished that result.**

(2) The situation in which the State finds itself in respect to the property of a non-resident decedent justifies it in placing such property in a separate class for the purpose of ascertaining the amount of the tax and prorating the exemptions allowed, and applying proportionately a graduated scale of taxation—at the same rate, however, which is applied in the case of the universal succession of a resident decedent in respect to all of his property wherever situated. That is to say, the State, taxing at the same rate, may apply that rate in a different manner in the case of a succession to property of a non-resident actually situated within the State from the case of a universal succession to property of a decedent domiciled within the State, so long as there be no arbitrary and deliberate discrimination in the manner of application.

## V.

The claim of plaintiffs in error that the ratio provision is in violation of the due process clause of the Fourteenth Amendment is based on the proposition that the New Jersey transfer statutes impose taxes on property without the jurisdiction. This mistaken proposition has been dealt with in the course of argument, and it is not thought that it requires separate elaboration.

## VI.

The judgment of the State Court should be affirmed.

JOHN R. HARDIN,
*Of Counsel for Defendants-in-Error.*

## APPENDIX A.

**Comment upon and illustration of practical working of application of ratio provision in varying instances.**

It has been thought best not to break the continuity of our argument with specific examples. Nor does it seem necessary to burden the Court with many examples of the application of the ratio provision in the innumerable suppositious cases in which there might be exhibited variations due to differing situations of the successors according to variant provisions of the will, in cases of testacy, to their variant relations to the testator or intestate, and to the variant character and volume of the assets of the estate and of the allowable deductions for debts, etc.

Some comment is necessary upon the examples contained in the brief of plaintiffs in error.

The fundamental error in their examples is the comparison of a non-resident estate having property within and without the State, with a resident decedent's estate no larger in total amount than the non-resident's New Jersey fraction. They should compare the tax on the non-resident's New Jersey fraction with the tax on a like New Jersey fraction of a resident decedent of like total estate but with a like amount of personalty without the State.

Thus the illustration on page 14 of plaintiffs'-in-error brief should be amended so as to compare the non-resident's estate with that of a New Jersey resident owning not only $50,000

in New Jersey stocks, but also $450,000 in foreign personalty. In that case the tax on the entire estate would be $11,450, of which the tax on that part of the estate consisting of New Jersey stock is one-tenth, or $1,145, the exact amount of the tax on the New Jersey assets of a non-resident decedent's estate owning the same character and amount of assets.

To show the unsoundness of plaintiffs'-in-error comparison, it is only necessary to invert it. To illustrate: Take the simple case of a *resident* leaving $500,000 to a child, 10% of which legacy is in stocks of New Jersey corporations, and compare with a *non-resident* leaving only $50,000 in New Jersey stocks to a child. The statutory computation would be:

| RESIDENT ESTATE | | | NON-RESIDENT ESTATE | | |
|---|---|---|---|---|---|
| $ 5,000 | | exempt | $ 5,000 | | exempt |
| 45,000 | 1% | $ 450 | 45,000 | 1% | $450.00 |
| 100,000 | 1½% | 1,500 | | | |
| 100,000 | 2% | 2,000 | | | |
| 250,000 | 3% | 7,500 | | | |
| Total $500,000 | Tax | $11,450 | Total $50,000 | Tax | $450.00 |

(Tax on New Jersey stocks, 10%, or $1,145.)

Thus, on the basis of comparison employed by plaintiffs-in-error, *the resident estate pays $695 more tax than the non-resident estate for the same amount passing.*

The same fallacy is found in their comparison of average rates on p. 15. The same difference in average rates of course exists in the case of resident estates of like respective total amounts.

**Specific Legacies.**

It has been shown in the body of the brief that, in the Maxwell case, the exception of specific legacies from the application of the ratio provision works no injury to the plaintiffs-in-error in that case.

There is, of course, absolute equality in the imposition of the tax as between specific legatees under identical wills of residents and non-residents.

The proviso in respect to specific gifts does not necessarily discriminate against the general legatee.

Take the case of a non-resident owning $10,000 in New Jersey stocks and $10,000 in foreign personalty, and distributing half to a collateral and half to a wife. If the New Jersey stocks are specifically bequeathed to the collateral the tax is $500; if specifically bequeathed to the wife the tax is $50; whereas if bequeathed in blended residue the tax on the New Jersey stock is $275.

**Exclusion of New Jersey intangibles from taxation when owned by non-resident estates.**

At the same time that the legislature by the amendment of 1914 included the real estate, situate without the State, in the ascertainment of the succession tax on the property within the State of non-resident decedents, the legislature relieved from succession tax part of the property of non-resident decedents within the State theretofore subject to such tax.

As before explained, the legislature, by the amendment of 1914, limited the property within the State of non-resident decedents subject to the transfer tax, all of which had theretofore been subject to such tax, to real property within the State, to goods, wares and merchandise within the State, and shares of stock of corporations of the State and of national banking associations located in the State. This restricts the succession tax on the property of non-resident decedents to real property and tangible personal property and shares of corporate stock of corporations of the State and of national banks located in the State.

Under the original second sub-division of Section I other property of non-resident decedents was unquestionably subject to transfer tax, such as deposits in banks of the State, mortgages on real estate in the State, notes and bonds actually within the State (*Hopper* v. *Edwards, supra,* 88 N. J. L., 471), and probably all open debts owing to the non-resident decedent by citizens of the State.

*Kinney* v. *Stevens,* 207 Mass., 368; 93 N. E., 586; 35 L. R. A. (N. S.), 784; Ann. Cas. 1912 A, 902.

*Re Rogers,* 149 Mich., 305; 112 N. W., 931; 11 L. R. A. (N. S.), 1134; 119 Am. St., 677.

*Bliss* v. *Bliss,* 221 Mass., 201; 109 N. E., 148; L. R. A. 1916 A, 889. (Commented on, 29 Harv. Law Rev., 107.)

*State v. Probate Court,* 128 Minn., 371; 150 N. W., 1094; L. R. A. 1916 A, 901.

*Bradley* v. *Merriam* (Mich.), 111 N. W., 196; 9 L. R. A. (N. S.), 1104.

*Re Houdayer*, 150 N. Y., 37; 44 N. E., 718; 34 L. R. A., 235; 55 Am. St., 642 (writ of error dismissed, 175 U. S., 32).

That the exclusion of New Jersey intangibles, other than stock, from the taxation of non-resident successions, renders the classification, considered (as it must be) in its entirety, of resident and non-resident estates, vastly more favorable to non-resident estates than to resident estates, is clear as to the great plurality of cases, notwithstanding that statute, in the case of a non-resident estate, prorates the exemptions and the application of the graduated rates, and draws the foreign realty into computation.

Take the following cases:

| | | |
|---|---|---|
| 1. | $2,000,000 | New Jersey intangibles. |
| | 1,000,000 | New Jersey stocks. |
| | $3,000,000 | All to widow. |

| Resident estate | Tax | Non-resident estate |
|---|---|---|
| $86,450.00 | | $28,816.66 |

| | | |
|---|---|---|
| 2. | $2,000,000 | New Jersey intangibles. |
| | 1,000,000 | New Jersey stock. |
| | 1,000,000 | Foreign realty. |
| | $4,000,000 | All to widow. |

| Resident estate | Tax | Non-resident estate |
|---|---|---|
| $86,450.00 | | $29,112.50 |

| | | |
|---|---|---|
| 3. | $2,000,000 | New Jersey intangibles. |
| | 1,000,000 | New Jersey stock. |
| | 1,000,000 | Foreign personalty. |
| | $4,000,000 | All to widow. |

| Resident estate | Tax | Non-resident estate |
|---|---|---|
| $116,450.00 | | $29,112.50 |

(Of which tax on the resident's estate three-fourths, or $87,337.50, is on the property having a situs in New Jersey.)

| | | |
|---|---|---|
| 4. | $2,000,000 | New Jersey intangibles. |
| | 1,000,000 | New Jersey stock. |
| | 1,000,000 | Foreign realty. |
| | 1,000,000 | Foreign personalty. |
| | $5,000,000 | All to widow. |

| Resident estate | Tax | Non-resident estate |
|---|---|---|
| $116,450.00 | | $29,290.00 |

(Of which tax on the resident's estate $87,337.50 is on property having a situs in New Jersey.)

The above figures illustrate, incidentally, to what a trifling extent the introduction of foreign realty as a factor in the computation affects the amount of the tax on a non-resident estate

For example: Under case 1, *supra*, the exclusion of the New Jersey intangibles saves the non-resident $57,633.34, whereas, in case 2, the inclusion of the foreign realty increases the tax only $295.84.

So, in the Hill case it has been shown that the inclusion of the foreign real estate increases the tax only $91.51; whereas, if New Jersey taxed bank deposits within the State, owned by non-resident decedents, and the Hill Estate had only $3,050.53 on deposit in New Jersey, in addition to the stock, the tax on that deposit (at 3%) would offset the effect of including in the computation the foreign real estate appraised at $1,885,120.

The figures forcibly evidence the liberality shown to non-resident estates in permitting succession, free from tax, to a large class of property (debts, bank deposits, bonds, mortgages, commercial paper), having a situs within the State, succession to which is taxed in the case of resident decedents.

The question whether the classification which excludes altogether from taxation intangibles owned by non-residents, but includes in the computation of the tax real estate outside the State, discriminates against the non-residents, might at a superficial glance be thought to depend upon the extent of individual holdings by New Jersey residents of realty outside of the State, as compared with the individual holdings of intangibles within the State by non-residents. If this were so, the question could readily be determined in favor of the State. Real estate ownership is necessarily circumscribed by the fact that it is a tangible local form of property, by its immobility as a form of investment, by its less easy transferability, by its greater liability to certainty of taxation

and by the lack of markets of exchange. Investment in intangibles, however, knows no boundary lines.

That, however, is not the test, for the inclusion of the foreign property in the computation does not, as has been shown, result in a tax thereon, but only in absorbing a small part of the exemption and of the lower steps in the graduation of the tax.

**Prorating Debts and Administration Expenses.**

The ratio provision necessarily results in the deduction from the New Jersey assets of a *pro rata* portion of the whole of the debts and administration expenses.

In the absence of the provision for pro-rating debts and expenses, the State would be justified, according to some authorities, in disallowing any claim for deduction of debts and expenses, save the debts owing to local creditors, and expenses incurred in local ancillary administration, which last are in the plurality of cases, negligible or non-existent.

*Memphis Trust Co.* v. *Speed,* 114 Tenn., 677, 88 S. W., 321.

*McDougald* v. *Low* (Cal.), 127 Pac. Rep., 1027.

*Henty* v. *Reg.,* (1896) A. C., 567; 65 L. J. P. C., 94.

This prorating of debts and expenses under the statute may, in some cases, be more favorable in result to the non-resident estate than a computation based exclusively upon the New

Jersey property in accordance with the doctrines maintained by plaintiffs-in-error.

Take case of non-resident owning $100,000 New Jersey stocks and $50,000 foreign personalty, subject to $50,000 in debts and administration expenses, and leaving all to widow. The tax according to the statute would be as follows:

| | | |
|---|---|---|
| Net estate | | $100,000.00 |
| Exempt | $ 5,000.00 | |
| 1% | 45,000.00 | 450.00 |
| 1½% | 50,000.00 | 750.00 |
| | $100,000.00 | |
| Tax to be apportioned | | $1,200.00 |
| Two-thirds (being ratio of New Jersey property to entire estate) | | $800.00 |

If the statutory command to prorate the debts and expenses were non-existent, and it were not shown that the New Jersey stocks were in fact employed in payment of debts, the tax might be assessed as follows, and in accord with the plaintiffs'-in-error contentions:

| | | |
|---|---|---|
| New Jersey estate | | $100,000.00 |
| Exempt | $ 5,000 | |
| 1% | 45,000 | 450.00 |
| 1½% | 50,000 | 750.00 |
| | Tax | $1,200.00 |

Whatever be the sound rule in respect to proportional deduction for debts and expenses from the value of local personalty in the absence of statute, there can be no doubt that our statute

distinctly favors the non-resident in allowing such a deduction against local realty. For this is in disregard of the rule which would otherwise apply, namely, that the personalty is the primary fund for the payment of debts.

Take, *e. g.*, an estate left to the widow, consisting of $20,000 New Jersey realty and $10,000 foreign personalty, subject to $5,000 debts and expenses. The statutory computation of the tax would be:

| | | |
|---|---|---|
| Net estate | | $25,000.00 |
| Exempt | $ 5,000.00 | |
| 1% | 20,000.00 | 200.00 |
| Tax to be apportioned | | $200.00 |
| Two-third (ratio of New Jersey property to entire estate) | | $133.33 |

In the absence of the statute, the widow would be taxed $150 on the devise.

## APPENDIX B.

### Statutory Provisions of United States and Canadian Provinces.

UNITED STATES.

*Connecticut.*

Chapter 66, General Statutes 1918 (p. 415), levies a classified graduated tax on estates of residents, and upon real estate and tangible personalty of non-residents.

Section 1265 provides:

> "* * * Only such percentage of the exemptions provided for in section 1264 shall apply as the estate of such non-resident in this State is of the entire estate."

*Kansas.*

General Statutes of 1915, section 11,203, *et seq.*, levies a classified graduated tax upon estates of residents and non-residents. Section 11,203 provides:

> "* * * That when one or more of the shares of an estate shall consist of property within and property without the State, only such percentage of the exemptions above named shall be allowed as is the percentage within the State of the total value of the shares: * * *"

*Maine.*

Chapter 69, Revised Statutes of 1916, page 1064, levies a classified graduated tax upon estates of residents and non-residents and Section

22 provides (as amended by Chapter 266 of the Laws of 1917, page 386):

> "• • • The amount of property of the estate of a non-resident which shall be exempt from the payment of an inheritance tax under section one shall be only such proportion of the whole exempted amount which is provided therein for the estates of resident decedents as the amount of the estate of the non-resident actually or constructively in this State bears to the total value of the non-resident decedent's estate wherever situated."

*Mississippi.*

Chapter 109 of the Laws of 1918, page 94, levies a tax at a flat rate upon the excess value over $5,000 as a tax upon the *right to transfer* on the net estate of every resident decedent and on the net estate of every non-resident decedent consisting of real estate and tangible personalty within the State.

Section 1 provides:

> "• • • That in the case of the estate of a non-resident decedent only such proportion of said exemption of $5,000 shall be allowed, as the value of the real estate and tangible personal property located in Mississippi, or any interest therein, bears to the value of the entire estate wherever located; and provided, further, that the executor, administrator or trustee of such non-resident decedent's estate shall file with the Board of Tax Commissioners a sworn statement showing the full and fair cash value of the entire estate. If said statement is not filed as herein provided, no exemption shall be allowed."

The statute also imposes as a tax upon the *right to receive,* a classified graduated tax covering the estates of resident decedents and the like property of non-residents. Section 9, subdivision 4, reads as follows:

"(4). In the case of the transfer of a non-resident decedent's real estate and tangible personal property located within this State, or of any interest therein, only such proportion of the exemptions herein specified shall be allowed as the value of the transferee's share in said property, or any interest therein, bears to the value of said transferee's share in the entire estate of said non-resident decedent; provided, that the executor, administrator or trustee of such non-resident decedent's estate or transferee shall file with the Board of Tax Commissioners a sworn statement exhibiting the full and fair cash value of the entire estate. If said statement is not filed as herein provided, no exemption shall be allowed."

*North Dakota.*

Chapter 231, Laws of 1917, page 320, levies a classified graduated tax and provides in Section 17:

"17. DEBTS, EXEMPTIONS, ETC., TO BE APPORTIONED. Whenever a tax is due from any resident or non-resident upon the transfer of any property or estate which is partly within and partly without the State, or upon any stocks, bonds, mortgages or other securities representing any such property partly within and partly without this State, such person shall be entitled to deduct from the value of such property so transferred only a proportion of the debts, expenses or (*sic*) adminis-

tration and *exemptions*, equal to the proportion which the North Dakota property bears to the entire estate of the decedent."

*Oklahoma.*

Chapter 162, Session Laws of 1915, page 215, provides for a classified graduated tax on estates of both residents and non-residents. Section 7, as amended in 1917, Acts, page 204, says:

"* * * That when one or more shares of an estate shall consist of property within and property without the State, only such percentage of the exemptions named in this act, shall be allowed as in the percentage within the State of the total value of the shares."

*Rhode Island.*

Chapter 1339, Session Laws 1916, page 4, contains provisions identical with the Mississippi statute above quoted.

*South Dakota.*

Chapter 217, Session Laws of 1915, page 419, levies a classified graduated tax upon estates of residents and non-residents. The last paragraph of Section 3c reads as follows:

"Provided that if any of the persons above named to whom are granted such exemptions shall receive from the decedent by the same transfer property outside the jurisdiction of this State, and upon which no inheritance tax is collectable by this State, which property is exempt from an inheritance tax in the jurisdiction where located, such person shall be entitled to only

such part of the exemption herein provided for as such exemption exceeds the value of the property outside the jurisdiction of the State received by him by such transfer."

*Wisconsin.*

Chapter 48 B of Statutes of 1913, Section 1087, page 775 (amended in 1915 and 1917), levies a classified graduated tax upon the estates of residents and non-residents.

Section 11, subdivision 5, provides:

"Whenever a tax is due from any resident or non-resident upon the transfer of any property or estate which is partly within and partly without this State, or upon any stocks, bonds, mortgages or other securities representing any such property partly within and partly without this State, such person shall be entitled to deduct from the value of such property so transferred only a proportion of the debts, expenses of administration and *exemptions*, equal to the proportion which the Wisconsin property bears to the entire estate of the decedent."

CANADIAN PROVINCES.

*Alberta.*

Chapter 5 of the Laws of 1914 (Public Statutes 1915, page 1465), as amended by Chapter 34 of the Laws of 1918 (Statutes 1918, p. 235), provides:

Section 3. "In this act.....

.....

'aggregate value' means the fair market value of the property of a deceased person, both within and without the province, pass-

ing on his death, * * *"

"'Passing' means * * * whether the deceased at the time of his death was domiciled in the province or elsewhere. * * * "

Section 5. "This Act shall not apply as respects the payment of succession duties * * *

"(2) To property passing in the manner aforesaid, to or for the use of a *resident or residents* of the province, being the grandfather, grandmother, father, mother, husband, wife, child, son-in-law, or daughter-in-law of the deceased, where the net value of the property of the deceased does not exceed ten thousand dollars.

Section 7. "Save as otherwise provided, all property of any person, situate within the province, and passing on his death, shall be subject to succession duties at the rate or rates set forth in the following table, the percentage payable on the share of any person or beneficiary being fixed by the following or by some one or more of the following considerations, as the case may be:

"(a) Net value of the property of the deceased;

"(b) Place of residence of person or beneficiary;

"(c) Degree of kinship or absence of kinship to the deceased."

"PERCENTAGES PAYABLE ON SHARES PASSING TO OR FOR THE USE OF.

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| "Net value of the property of the deceased. (Section 3) | Grandfather, grandmother, father, mother, husband, wife, child, son-in-law, or daughter-in-law, of the deceased being a resident or residents of the province. | Any person or persons mentioned in column 2 not being a resident or residents of the province. | Any other lineal ancestor of the deceased, a brother or sister of the deceased, ..... (etc.) | Any other person or beneficiary." |
| Exceeding $5,000. and not exceeding $10.000. | nil | ½ | 5 | 10 |
| Exceeding $10.000. and not exceeding $15,000. | ½ | 1 | 5½ | 10½ |
| Exceeding $15.000. and not exceeding $25,000. | 1 | 1½ | 6 | 11" |
| (And so on up to that portion of the estate exceeding $2,000,000.) | (And so on up to 10%) | (And so on up to 11%) | (And so on up to 14%) | (And so on up to 20%) |

"Provided, however, that no duty shall be payable on the share passing to any person mentioned in columns 2 or 3, where the value of the property taken by such person, wherever situate, does not exceed two thousand dollars."

Section 7a. "Where the share of any person mentioned in the second or third column of the table in the next preceding section exceeds fifty thousand dollars, or where the share of any person mentioned in the fourth column of the said table exceeds twenty-five thousand dollars, additional duty shall be payable on the taxable portion of such share at a rate set forth in the following table, the additional percentage payable on such share being determined by the following considerations:

"(a) Value of property taken, wherever situate.

"(b) Degree of kinship to the deceased."

There is then appended to this section a similar table of graduated rates in which, however, no distinction is made between residents and non-residents.

The words "(a) value of property taken, wherever situate," prior to the amendment of 1918, which added Section 7-a, appeared in Section 7, but were struck out of Section 7 by the amendment of 1918.

*Manitoba.*

Chapter 187 of the Revised Statutes of 1913, page 2699, as amended by Chapter 113 of the Statutes of 1914 (Statutes 1913-1914, page 445), provides:

> Section 2. * * * (b) "The expression 'aggregate value' means the fair market value of the property * * * and, in determining such aggregate value for the purpose of ascertaining whether any estate is wholly or partially exempt from payment of duties under this Act or the percentage of duties payable on the property in this province, there shall be included the value of any property of the deceased situate outside of Manitoba at the date of his death and also any property of any of the kinds referred to in paragraphs (b), (c) and (d) of Section 5, which formerly belonged to the deceased whether within or without the province."

4. "This Act shall not apply—

"(a) to any estate, the dutiable value of which does not exceed four thousand dollars, unless the aggregate value of the estate, including any portion or portions thereof situated out of Manitoba, is such that if the whole estate were in Manitoba the dutiable value would exceed four thousand dollars, nor

"(b) to property passing under a will, testacy or otherwise, to or for the use of a *resident or residents* of the province, and being the father, mother, husband, wife, child, grandchild, grandparent, daughter-in-law or son-in-law of the deceased, or one or more of such persons, where the dutiable value of the property so passing, including property not situated in Manitoba, does not exceed twenty-five thousand dollars, and when the person leaving such estate was and had been for at least six months prior to his death domiciled in Manitoba."

6. "In all cases the duty payable upon all property liable to duty under this Act shall subject to the provisions of the next following section be computed upon the dutiable value of such property according to the following table:"

Then follows a table of classified graduated rates.

7. "In case the deceased left property outside of Manitoba which, if it had been situated therein, would have been liable to succession duties under this Act, it shall be the duty of the Provincial Treasurer to ascertain and determine the aggregate value of the estate of the deceased as defined by this Act, and the total amount of what would be the dutiable value of the whole

estate if it had all been situate in Manitoba; and the percentages of duty payable upon that portion of the estate situate in Manitoba shall be the same as if all the property had been situated in Manitoba; for example, if A's estate consists of $100,000 dutiable value in Manitoba and $400,000 dutiable value elsewhere, the percentage of duty chargeable on the $100,000 shall, in the case of a beneficiary being a near relative, be seven instead of two."

Section 14 provides that the administrative officer may require full particulars as to all property, real and personal, left by the deceased, whether situate within or without the Province, etc.

*New Brunswick.*

Chapter 17 of the Consolidated Statutes of 1903 (page 209), provided as follows:

Section 5, subdivision 1, paragraph (f):

"Where the property of a deceased person liable to succession duty under this chapter, or any part thereof, or any legacy, charge or annuity payable out of the same, goes to any person residing out of the province, the duty payable on the amount or portion going to such person shall be double the amounts hereinbefore specified."

The Province enacted a new Succession Duty Act in 1915, Chapter 27 (Session Laws, page 326).

In Section 2—(a) it is provided " • • • for the purpose of determining the aggregate value and the amount of duty payable, the value of

property situate out of New Brunswick shall be included."

Section 2 (g) in defining "passing on the death" applies "whether the deceased was at the time of his death domiciled in New Brunswick or elsewhere."

Section 8, subdivision 1, paragraph (a) provides that the following property shall be deemed to be within the Province:

> "All property situate within the province belonging to a deceased person, whether such person was or was not domiciled therein."

Section 10 provides a classified graduated rate, which rates, together with the exemptions, are determined by the aggregate value, and provides:

> "(e) Where any successor resides out of the province, by applying to the value of so much of the said property as passes to him, double the rate hereinbefore provided for."

*North-West Territories.*

Chapter 116 of the Consolidated Ordinances of 1911, page 568, provides:

> Section 3. .....
> .....
> 1. "The word 'property' includes real and personal property of every description and wheresoever situate .....
> 2. "The expression 'aggregate value' means the value of the property • • • and for the purposes of sub-sections 3, 4 and 5 of section 5, includes property outside of the territories.....
> ....."

Section 5 levies succession duty upon all property situate within the territories whether the deceased owner was or was not domiciled therein, and subsections 3, 4 and 5 impose a classified graduated rate of taxation, which rates, as well as the exemptions allowed, are determined by the aggregate value.

(The amendments, if any, since 1911, are not accessible to us.)

*Nova Scotia.*

Chapter 5, Laws of 1917, page 58.

Section 2, subdivision 1, paragraph (a) in defining the phrase "passing on the death" makes the definition applicable whether or not deceased was domiciled in Nova Scotia.

Section 2, subdivision 1, paragraph (g) defines "aggregate value" as including the value of property situate out of Nova Scotia.

Section 5 reiterates this definition in stating how the aggregate value of property is to be determined.

Section 7, paragraph (a), provides that the duty shall be levied on all property situate within Nova Scotia, including debts owing from persons in Nova Scotia, whether the decedent owner was or was not domiciled in Nova Scotia.

Section 8, in stating the exemptions, which are based on aggregate value, includes in subdivision 5 "property passing to any one person if the whole value of all the property, whether situate in or out of Nova Scotia, pass-

ing on the same death to such person does not exceed three hundred dollars."

Section 9 imposes classified graduated rates which are determined by aggregate value.

Sub-section (1) (i) also provides for additional duty where the "value of the property whether situate in or out of Nova Scotia passing" to any one of the specified persons, exceeds $25,000, and at a graduated rate. In dealing with a different class of beneficiaries, the same scheme is followed. See sub-division 2 (dd).

Section 16 makes it the duty of the successors to furnish a full inventory in detail of all property which passed on the death of the decedent, "including all property that passed on his death and which is situate out of Nova Scotia."

*Ontario.*

Chapter 24, Revised Statutes of 1914, page 317, as amended by Chapter 10 of the Laws of 1914, page 48, and Chapter 7 of the Laws of 1915, page 21, provides:

> 2. * * * (a) "* * * For the purposes of determining the aggregate value and the rate of duty payable the value of property situate out of Ontario shall be included ....."
>
> (f) " 'passing on the death' shall mean.. .....whether the deceased was at the time of his death domiciled in Ontario or elsewhere."

Section 6 prescribes the exemptions, which are fixed according to the amount of the aggregate value of the property passing.

Section 7, as also amended by chapter 6 of the Laws of 1918, p. 48, provides that all property situate in Ontario shall be subject to duty whether the deceased was at the time of his death domiciled in Ontario or elsewhere.

Section 8 provides a classified graduated rate determined by the aggregate value of the property passing, with an additional classified graduated duty determined by the aggregate value passing to any one person, and provides:

> Sub-section 5: "The additional duty provided for by sub-sections 2 and 4 shall be payable on the property in Ontario, where the deceased dies domiciled elsewhere than in Ontario, but for the purpose of fixing the rate of such duty the beneficial interest in property out of Ontario passing to the successor or other person on the same death shall be added to the value of the property in Ontario, and nothing in this Act shall be construed to impose any duty, directly or otherwise, on property out of Ontario owned by any deceased person so domiciled."

*Quebec.*

The Province of Quebec levies two forms of succession duties:

The act found in sections 1374 to 1387, inclusive, of the Revised Statutes of 1909 (p. 464), as amended by chapter 12 of the statutes of 1910 (p. 50), chapter 14 of the statutes of 1912 (p. 92), chapter 9 of the statutes of 1914

(p. 52), chapter 24 of the statutes of 1915 (p. 84), chapter 25 of the statutes of 1915 (p. 87), chapter 20 of the statutes of 1916 (second session, p. 90), and chapter 24 of the statutes of 1918 (p. 83), levies a classified graduated duty.

Section 1375 provides:

> "All property, moveable or immoveable, the ownership, usufruct or enjoyment whereof is transmitted owing to death, shall be liable to the following taxes calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of the death; * * *"

Sub-division 4 of paragraph 1375 before its repeal by chapter 12 of the statutes of 1910 (p. 50), provided:

> "That whenever any estate or part of an estate, or any bequest or legacy, subject to this section, devolves to any person domiciled outside of the British Empire or to any association having its chief place of business outside of the British Empire, an additional duty of 5% shall be paid upon the value of such estate, or part thereof, bequest or legacy, over and above the duty mentioned in clauses 1, 2 and 3 of this article."

Section 1376 defines the property, the transmission of which is subject to this tax, as follows:

> "The word 'property' within the meaning of this section includes all property, moveable or immoveable, actually situate within the Province, and all debts which were owing to the deceased at the time of his death, or are payable by reason of his death, and which are either payable in the

> Province, or are due by a debtor domiciled therein; the whole whether the deceased at the time of his death had his domicile within or without the Province, or whether the transmission takes places within or without the Province."

Prior to the amendment of this section in 1914 the definition of property included movable property situate out of the Province owned by persons having their domicile or residing in the Province at the time of death. The amendment was probably the result of the decision in *Cotton* v. *Regem, supra.*

The amendment of 1916 inserted the following as section 1375a:

> "The value of that part of the estate situated outside the Province shall be included for the purpose of fixing the rate of duty imposed under this section."

Section 1381 provides for a return upon death, and it is apparent from a reading that the section applies as well to a non-resident as to a resident decedent. It calls for information, among other things, of "the description, situation and real value of all the property transmitted by the deceased."

The amendment of 1915 inserted as section 1377a the following (as amended by the amendment of 1918):

> "In case the property transmitted in direct line forms only part of an estate, the other part of which is actually situated without the Province, no tax shall be exigible if the total value of the estate, after deducting the debts and charges existing at the time of the death does not exceed

> $15,000; if such total value does exceed $15,000, the tax on the value of the property actually situated in the Province shall be that enacted by article 1375, exclusive of the first sub-paragraph a of paragraph 1 thereof."

Chapter 10 of the statutes of 1914 (p. 60), enacted as sections 1387b to 1387i, inclusive, provisions levying a separate tax upon

> "all transmissions within the Province, owing to the death of a person domiciled therein, of moveable property locally situate outside of the Province at the time of such death,"

at a classified graduated rate and subject to administrative provisions similar to those under the other duty. This act was amended by chapters 24 and 25 of the statutes of 1915 (pp. 84, 87), chapter 20 of the statutes of 1916 (second session, p. 90), and chapter 24 of the statutes of 1918 (p. 83). The act contains provisions governing this tax which are similar to those of the foregoing act, providing for the apportionment of legacies, debts, exemptions, etc., providing also (section 1387c, as amended by the amendment of 1916):

> "The value of the moveable and immoveable property situated in the Province shall be included for the purpose of fixing the rate of duty imposed under this section."

*Saskatchewan.*

Chapter 16 of the statutes of 1917 (second session, p. 87):

> Section 2. • • • "1. 'Aggregate value' means the fair market value of the

property, * * * and for the purpose of determining the aggregate value and the rate of duty payable the value of property situate outside of Saskatchewan shall be included: * * *

"6. 'Passing on the death' means * * * whether the deceased was at the time of his death domiciled in Saskatchewan or elsewhere;"

Section 4. "In determining the aggregate value of property the fair market value shall be taken as on the date of the death of the deceased of all property passing on his death, including the value of property situate out of Saskatchewan."

Section 7. "No duty shall be leviable * * *

"(b) On property passing by will, intestacy or otherwise, to or for the use of a *resident or residents* of the Province, and being the father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased where the aggregate value of the property of the deceased does not exceed $25,000, and when the person leaving such estate was at the time of his death and had been for at least six months prior thereto domiciled in Saskatchewan;"

Section 8. "(1) So far as the legislative authority of the Province extends, the following property as well as all other property subject to succession duty upon a succession shall be subject to duty at the rates hereinafter imposed:

"(a) all property situate in Saskatchewan and any interest therein or income therefrom passing on the death of any person, whether the deceased was at the time of his death domiciled in Saskatchewan or elsewhere; * * *"

Section 11 levies a classified graduated rate on the whole estate, and an additional duty, classified and graduated, upon the shares passing to any one person.

Section 11. "(5) The additional duty provided for by sub-sections 2 and 4 shall be payable on the property in Saskatchewan, where the deceased dies domiciled elsewhere than in Saskatchewan, but for the purpose of fixing the rate of such duty the beneficial interest in property out of Saskatchewan passing to the successor or other person on the same death shall be added to the value of the property in Saskatchewan, and nothing in this Act shall be construed to impose any duty, directly or otherwise, on property out of Saskatchewan owned by any deceased person so domiciled."

"(7) Where the aggregate value of the property exceeds $5,000 and does not exceed $25,000, and any property passes in manner hereinbefore mentioned to or for the use or benefit of a *non-resident or non-residents* of the Province, and such non-resident is, or such non-residents are, the father, mother, husband, wife, child, son-in-law or daughter-in-law of the decedent, the same or so much thereof as so passes shall be subject to a duty of 1%."

"(8). Where the aggregate value of the property exceeds $5,000 and does not exceed $25,000, and any property passes in manner hereinbefore mentioned to or for the benefit of any of the beneficiaries of the class mentioned in sub-section 7 of section 11, then if the decedent had not been domiciled in Saskatchewan for at least six months before the date of his death, the

property or so much thereof as so passes shall be subject to a duty of 1%."

"(9) Where the aggregate value of the property exceeds $25,000, so much thereof as passes to a *non-resident or non-residents* of the Province being any of the beneficiaries of the class mentioned in said sub-section 7 shall by reason of such non-residence be subject to an additional duty of 1% over and above the duty to which such property would otherwise be liable under this Act."

Section 13 provides for a return of all property, "including any property not situate in Saskatchewan."

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1918.

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|---|---|
| LOUIS W. HILL, Administrator of the Estate of James J. Hill, deceased, *Plaintiff-in-Error,* *vs.* NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer, *Defendants-in-Error.* | *No. 731.* |

**Motion on the Part of Plaintiff-in-Error to Advance and to Have Hearing with Case of *Lawrence Maxwell, et al., Executors, etc., Plaintiffs-in-Error,* vs. *Newton A. K. Bugbee (Formerly Edwards), Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendants-in-Error.***

The case of *Lawrence Maxwell and Fulton Trust Company of New York, Executors of the last will and testament of James McDonald, deceased,* plaintiffs-in-error, v. *Newton A. K. Bugbee* (formerly Edwards), *Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer,* defendants-in-error, is No. 245 of the October Term, 1918, and will probably be reached for argument in March, 1918.

The last mentioned case and the above entitled case present the same questions for determination

and are both brought against the same defendants; both cases have been decided by the New Jersey Supreme Court and affirmed by the New Jersey Court of Errors and Appeals, and removed here by writ of error.

In the Hill case, the Supreme Court of New Jersey stated in its opinion, affirmed by the New Jersey Court of Errors and Appeals, as follows:

> "The other points argued by the prosecutor have all been decided against his contention in Maxwell *v.* Edwards, 101 Atl. Rep., 248."

The other points referred to are those presented on this writ of error.

The question presented by both of these cases is the validity, under Paragraph 1, Section 2 of Article IV of the Federal Constitution and the equal protection clause of the Fourteenth Amendment to the Federal Constitution, of the method of computing the New Jersey transfer inheritance tax in cases of non-resident decedents. The method adopted by the State, pursuant to the statute hereinafter referred to, requires for the same amount of property passing to the same class of beneficiaries a greater tax in the case of a non-resident decedent than in the case of a resident decedent. The method of computing the assessment provided for by the act is set forth in the last paragraph of Section 12 of P. L. N. J. 1914, 267, at page 273, as follows:

> "A tax shall be assessed on the transfer of property made subject to tax as aforesaid, in this State of a non-resident decedent if all or any part of the estate of such decedent, wherever situated, shall pass to persons or cor-

porations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such non-resident decedent had been a resident of this State, and all his property, real and personal, had been located within this State, as such taxable property within this State bears to the entire estate, wherever situated; provided that nothing in this clause contained shall apply to any specific bequest or devise of any property in this State."

The above quoted section was amended after the date of the death of the decedent in the Maxwell case and before the date of the death of the decedent in the Hill case, by Chapter 392 of P. L. N. J. 1915, page 745, which act took effect April 23, 1915, but the foregoing quoted paragraph is identical in th 1914 and 1915 acts.

The assessment under review in the Maxwell case is imposed in the case of a will which is very complicated and therefore involves a very complicated assessment. In *Hill* v. *Bugbee* the assessment is in the case of an intestate and the computation and assessment of the tax is simple. However, the same questions are raised in both cases.

We submit that it would be much simpler for this Court to deal with the facts in the Hill case than with those in the Maxwell case.

In the Maxwell case, in the Court below the defendant-in-error raised as a point of law, which the plaintiff-in-error disputed, that the decedent, James McDonald, being a citizen of the District of Columbia and not of one of the States of the